

RE: Video conferencing- cisco webex

From: [REDACTED]@gov.scot>
To: [REDACTED]@gov.scot>
Date: Thu, 15 Oct 2020 09:30:04 +0000

Hi [REDACTED]

I think James will give approval:

EPC details are:

[REDACTED]

Thanks, [REDACTED]

[REDACTED] | Scottish Government | Cabinet, Parliament and Governance Division | Tel:
[REDACTED] | email: [REDACTED]@gov.scot

From: [REDACTED]
Sent: 15 October 2020 10:16
To: [REDACTED]
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED]

I haven't checked with James but I will do once he returns from leave, and I think the EPC card would be an ideal approach!

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 12 October 2020 16:32
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED]

Good choice, for who is going to pay for this do you need to clear through James to see if we can pay for it. If so, I can then give you our epc card details to pay by credit card.

Thanks, [REDACTED]

[REDACTED] | Scottish Government | Cabinet, Parliament and Governance Division | Tel:
[REDACTED] | email: [REDACTED]@gov.scot

From: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Sent: 12 October 2020 16:15
To: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED]

Thanks, that's really helpful. I think that we will be looking to do interviews before then so Teams will probably come in in the middle of our work.

Looking at this link I think I need a starter account, probably only for 3 months or so.

<https://www.webex.com/pricing/index.html>

Could you check how/if it would be possible to sort this out through SG channels?

Best wishes,

[REDACTED]

From: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Sent: 12 October 2020 12:46
To: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex
Importance: High

Hi [REDACTED]

We have never subscribed to Webex so will not have a paid account. I have never used Webex but I am sure it isn't that difficult.

Are the interviews for Mr Hamilton taking place before the role out of Microsoft Teams at the beginning of November? Not sure what level that is regarding sensitivity and whether phase one includes users out with Scottish Government.

Let me know if you need any help with anything.

Thanks,

[REDACTED] | Scottish Government | Cabinet, Parliament and Governance Division | Tel: [REDACTED]
email: [REDACTED]@gov.scot

From: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Sent: 12 October 2020 12:30
To: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Subject: Video conferencing- cisco webex

Hi [REDACTED]

As part of the Mr Hamilton work, I'm looking to sort out video conferencing which would include the possibility of recording the interview. From the looks of things, Cisco Webex seems to be the best Scots approved tool.

The guidance is here:

<http://saltire/my-workplace/meetings/Audio-and-video-conferencing/Pages/web-conferencing.aspx?pageid=61699026-d85d-47a2-928c-8fa88c277618>

From the looks of things, in order to get the functionality I want I need some kind of paid account. I wondered if you knew if there was any existing subscription within the division, or had any experience in setting one up?

Best wishes,



Reply to Mr Aberdeen

From:



To: James Hamilton <[REDACTED]@[REDACTED]>

Date: Thu, 15 Oct 2020 09:35:31 +0000

Attachments: FW: Scottish Ministerial Code (16.38 kB); Your_Right_to_Know_2018.pdf (2.9 MB)

Dear James,

Please see attached short response to Mr Aberdeen's email- it's written from my perspective so may need adjusting.

I've attached a link to an introduction to FOI in Scotland- there are links to an introduction document I have also attached, and also more detailed explanations of things like exemptions.

<https://www.itspublicknowledge.info/Law/FOISA.aspx>

Jackie Baillie MSP has lodged a number of parliamentary questions concerning the Geoff Aberdeen meeting- I've attached a link.

<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Simple&DateChoice=0&MSPIId=1783&SortBy=DateSubmitted&ResultsPerPage=10>

Various other things to follow later today!

Best wishes,



Your Right to Know

A guide to freedom
of information
law in Scotland



Scottish Information
Commissioner

Freedom of Information:

FOI at a glance



See page 05

FOI gives you a right to receive information from public authorities



See page 09

FOI applies to public authorities, including local councils, the Scottish Government, colleges, universities, the NHS and the Police



See page 07

FOI gives a right to recorded information: that is information stored and held in some way



See page 13

Requests must be made in a recorded format e.g. in a letter, email or audio file



See page 15

If you need help to make your request, public authorities must help you



See page 16

Public authorities must respond promptly, and within 20 working days



See page 16

Most requests result in the information being provided



See page 18

Most information is provided free of charge, although authorities can charge in certain circumstances



See page 21

Information can only be withheld in specific circumstances



See page 11

FOI also requires authorities to publish certain information, to save you having to ask for it



See page 25

If you're unhappy for any reason you can, after asking the authority to reconsider its response, appeal to the Scottish Information Commissioner



See page 27

If the Commissioner thinks an authority has acted wrongly in withholding information from you, she can tell the authority to provide it



See page 31

If the information is environmental, your request will be responded to under separate regulations that cover environmental information



See page 37

Contact the Scottish Information Commissioner for information, advice and guidance

Terms used:

FOI

Freedom of Information

The FOI Act

The Freedom of Information (Scotland) Act 2002



Scottish Information
Commissioner



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Introduction

What are my rights and why would I use them?

You have legal rights to get information from Scottish public authorities. The Freedom of Information (Scotland) Act 2002 (the FOI Act) and the Environmental Information (Scotland) Regulations 2004 give you the right to ask for and be given information from a wide range of public organisations in Scotland. These organisations are called “Scottish public authorities”.

See *Which organisations can I ask for information?* (page 09)

You can use your rights to ask for all sorts of information, for example:

- Why decisions affecting local services have been made, such as a decision to cut back some services at your local hospital, or to combine local primary schools.
- How public authorities decide which roads to repair, or who should receive funding.

Or you may want to find out about:

- The contract under which a private company is providing a service for a Scottish public authority, such as a care home service. This could include their charges for providing the service, or details of any agreed standards that the service must meet.
- Studies carried out or considered before decisions are taken, for instance on the safety of vaccines or medicines.

Further examples are given in the section *What information do I have the right to see?* (page 07)

What if I want to see information about me?

The Data Protection Act gives you the right to see information about yourself. You can find guidance on how to use this right on the UK Information Commissioner’s website www.ico.org.uk

Is there information I may not be able to see?

Access to some information is limited. This is explained later in this guide. If the public authority refuses to give you the information you asked for, you can ask the authority to review its decision. If you are still unhappy, you can appeal to the Scottish Information Commissioner. If the Commissioner decides the public authority should have given you the information, she will enforce your rights under the FOI Act. See *What if I am unhappy with the reply?* (page 23)

Do I always have to make a special request to see information held by public authorities?

No. Freedom of information requires Scottish public authorities to publish a lot of information under what is known as the “publication scheme” duty. If you can, search the public authority’s website before making a request, or even call and ask them about what is available as you may find that you get the information you’re looking for more quickly! The public authority should publish a “Guide to Information” which works like an index to the information they make available. See The *“publication scheme” duty: what is it and how can it help me?* (page 11)



Any questions?
Get in touch, we are happy
to help. See page 37 for
contact details



What information do I have the right to see?

You can ask to see any kind of recorded information from a Scottish public authority, however old the information is. That includes information recorded on:

- paper
- computer files, including e-mails
- video
- microfiche

To find out which organisations are Scottish public authorities, see *Which organisations can I ask for information?* (page 09)

Examples of the information you can ask for include:

- The number of complaints about a particular issue, for example bullying at school or bin collections, and whether action was taken as a result.
- Information showing whether public authority policies are working well. For example, is a community policing initiative reducing crime in the local area?
- Information that would reveal whether a contract is providing value for money. For example, what standards have been agreed with agencies contracted to supply hospital cleaning or catering services?

Further examples of the information you can ask for can be found on page 05 *What are my rights and why would I use them?*

Environmental information

The FOI Act doesn't apply to environmental information, but the Environmental Information (Scotland) Regulations 2004 give you very similar rights.

You can find out more in the section *What about my right to see environmental information?* (page 31) but here are some examples of what could be included:

- Genetically-modified crop trials
- The cleanliness of beaches
- The location of mobile phone masts
- Plans for a new building or wind farm
- Food hygiene inspections
- Chemicals, including cleaning products, used in public buildings
- Management of fish farms

The environmental information regulations apply to a slightly wider range of organisations than the FOI Act, and there are some practical differences in how you can get hold of information under the Act and under the regulations. These differences are explained in the section *What about my right to see environmental information?* (page 31)



Which organisations can I ask for information?

You have the right to ask for information from:

- The Scottish Government and its agencies, including Transport Scotland and the Scottish Prison Service
- The Scottish Parliament
- Local government, including councils, assessors, licensing boards and Strathclyde Partnership for Transport
- The National Health Service, including NHS boards, hospitals, GPs, dentists, pharmacists and opticians
- Universities and colleges
- Police Scotland and the Scottish Fire and Rescue Service
- Other public authorities, including more than 50 types of Scottish public authorities not covered in the categories above. They range from Scottish Enterprise to Scottish Water
- Companies that are wholly owned by one or more public authorities, such as Caledonian MacBrayne and Prestwick Airport. Other companies might include those set up by local authorities and universities
- Organisations set up by councils to develop or deliver recreation, sporting, cultural and social services (for example Edinburgh Leisure, Eden Court Theatre)

The list of Scottish public authorities changes from time to time as new authorities are added or current ones change their names. A list is published on the Scottish Information Commissioner's website at www.itspublicknowledge.info/YourRights/Whocanlask.aspx or you can contact the Scottish Information Commissioner. See *Where can I get further information and help?* (page 37)

What about other organisations providing public services?

Other organisations can be added to the list of Scottish public authorities by the Scottish Government with the Scottish Parliament's approval.

New organisations can be added if they carry out public services that are normally the responsibility of a Scottish public authority. Private companies may also be added if they are involved in significant projects of a public nature, for example through a private finance initiative or a public-private partnership contract. Only the company's involvement in public work would be covered, and not other areas of its business.

What about organisations outside Scotland?

Scottish FOI law does not give you a right to information held by organisations outside Scotland but you have separate rights to it. You have a general right to information held by United Kingdom public authorities under UK FOI laws. These public authorities include government departments and agencies responsible for matters dealt with by the UK Parliament, such as:

- UK foreign policy
- UK defence and national security
- immigration and nationality
- energy: electricity, coal, gas and nuclear energy
- trade and industry, including consumer protection
- social security, including work and pensions
- the economic and monetary system, including the Inland Revenue.

This guide does not cover your rights to information held by UK public authorities. In most cases, the rights to the information are similar to those provided by the FOI Act. For advice on getting information from UK public authorities, contact the United Kingdom Information Commissioner. See *[Where can I get further information and help?](#)* (page 37)

Don't be put off asking for information just because you're not sure whether you're dealing with a Scottish or a UK public authority. You still have a right to ask for the information and the authority must give you any help you need, whether it is a Scottish or a UK public authority; all you have to do is ask.



The “publication scheme” duty: what is it and how can it help me?

As well as responding to requests, public authorities must publish information. This means that they must make information available publicly, so people don’t have to ask for it. This is often referred to as the “publication scheme” duty. Under this duty, all Scottish public authorities must produce a **Guide to Information** that shows:

- the information they already make available or intend to make available
- where you can find the information
- whether it is available free of charge or for a fee.

A list of Scottish public authorities and their website addresses is available on the Scottish Information Commissioner’s website at:

www.itspublicknowledge.info/YourRights/Whocanask.aspx

The Guide to Information should tell you how to access a range of information, including:

- management or board meeting minutes
- the authority’s annual budget
- details of the services provided by the public authority
- the authority’s policies and procedures.

Other information will also be included: for example, a council will publish information about its education, housing, planning and social services. You should be able to find out what services are available, whether you will be charged for them and how well they are delivered.

The Guide to Information will be on the authority’s website and should provide links to the information that you can view and download. If you do not use the internet, you can ask for a copy of the Guide. A Guide to Information will also include contact details of staff who can help you access information from the authority. If you are not sure whether information is published, you can ask these staff for help.

What if the information I need isn't in the Guide to Information?

If the information you're looking for isn't in the authority's Guide to Information, you can still ask for it by following the steps described in the next section.



How do I ask for information?

Requesting information from a Scottish public authority is simple; all you have to do is ask. You don't even have to live in Scotland.

You don't have to mention FOI (although you can), nor do you have to give any reasons for asking or say why you want the information.

All you have to do is:

- Make your request in a form that can be kept for future use such as writing, e-mail, fax, audio or video tape.
- Give your full name, and address (email or postal) so that the authority can reply.
- Ask for the information you want. Describe the information as clearly and as briefly as you can. If you do it is more likely the authority will respond quickly and accurately.
- Send your request to a Scottish public authority. It is a good idea to check whether the authority has a special FOI address or contact person. Use these details if you have them. You can see a list of addresses at: www.itspublicknowledge.info/YourRights/Whocanask.aspx
- If you don't have this address you can send your request to anyone in the authority, from a receptionist to a senior official.

Tips for asking for information

- You can ask for any recorded information the authority holds at the time of your request. Think about the types of information that the authority might hold that are of interest to you, for example, internal correspondence, staff procedures, reports, minutes of meetings, or information in a database.
- Try to make your request as clear as possible so that it cannot be misunderstood.
- Focus on the information you really want to see. If your request is too wide-ranging it might be refused because of the cost of responding. To keep your request narrow, try asking for information between two dates, or limiting your request to a particular subject or decision.
- It may be helpful to add your phone number or other contact information if you are happy for the authority to contact you this way. It can help speed up

your response, allowing the authority to get in touch with you quickly to check a point. If you do not provide enough detail to allow the authority to identify the information, or if your request is unclear, the authority may ask you for clarification.

- Keep a copy of your request and any correspondence until you get the information you want to see. You'll need these if you want to appeal to the Commissioner.

There's more useful guidance on making requests available at:

www.itspublicknowledge.info/tipsforrequesters

What if I am not sure exactly what information I want to see?

You can ask the public authority to help you describe the information you are looking for more clearly and in more detail. They have a duty to help you and should not refuse. It may help if you can ask them more about what you are interested in seeing.

Staff may explain what kinds of information the authority holds, and in what format. If they don't have the information you want, staff may be able to tell you which other organisation could provide it.

You may also find it helpful to look at the public authority's Guide to Information, which will show the range of information it already makes available. For more information see the section The *"publication scheme" duty: what is it and how can it help me?* (page 11)

Information from a publicly owned company or local authority trust

Some public authorities set up companies to manage services on their behalf, such as local development projects or commercial activities. If a company wholly owned by one or more public authorities has the information you want, then you should ask the company rather than the authority for the information.

If you want information about a service provided by a private company through a contract with a public authority, then you should ask the public authority. The contracting company will not normally be covered by FOI law. See *Which organisations can I ask for information?* (page 09)



What if I need help to make a request for information?

The authority has a duty to help you make your request, for example with the wording. If you find it difficult to put your request in writing or have a disability, staff may offer to take a note of your request over the telephone and then send the note for you to confirm, with a stamped addressed return envelope. Remember that if you have trouble writing, you can also send an audio recording of your request. Staff may also offer to help you by recording your request over the phone or over the counter.

What if I need information in a particular format?

As far as reasonable, the authority must provide the information in the format you prefer. If you would like the information to be provided in a particular way, say so in your request. You might, for example, request a photocopy, an electronic file or a summary of the information. You can also ask to see the information at the authority's office and then ask for copies.

In deciding what is reasonable, the authority must not discriminate against you if you have a disability. (For more information about this, you should contact the Equality and Human Rights Commission. See *Where can I get further information and help?* (page 37))

If you need the information in a language other than English, the authority does not generally have to provide it in that language. But depending on the authority and where you live, the authority may decide to translate the information for you.

Do young people have the right to ask for information?

Yes, if you are aged 12 or over you automatically have the same rights to information. If you are under 12 you can still ask for the information, but you may be asked to show that you understand what you are doing.

If I make my request by email do I have to give my postal address?

No. An email address is enough so that the authority can reply, although it often helps with the delivery of information if you also give a postal address.

Can I make an anonymous request?

No. You must give your real name in your request so that the authority can reply. If you don't use your real name, the authority doesn't have to reply, and the Commissioner won't be able to investigate your case.



What happens after I've made a request?

The authority must give you the information you asked for or tell you why it will not provide it. It should do this promptly and in most cases within 20 working days. If you send your request by post you should allow time for posting. Use the “response calculator” on the Scottish Information Commissioner’s website to check when you can expect a response: www.itspublicknowledge.info/calculator/calculator.php

What kind of reply can I expect?

Within 20 working days, normally you will have received one of the following:

- All the information you asked for, in most cases free of charge.
- Some, but not all, of the information. See *Is there information I may not be able to see?* (page 21)
- A fees notice, if there is a charge for the information. See *What could it cost me to get the information?* (page 18)
- A refusal. See *Why might my request be refused?* (below)
- No response, which you should treat as a refusal. See *What if I am unhappy with the reply to my request for information?* (page 23)

Why might my request be refused?

Information should usually be made available on request, but there are some circumstances when your request may be refused.

The public authority is allowed to refuse your request in the following circumstances:

- The information can be withheld under the FOI Act. See *Is there information I may not be able to see?* (page 21)
- The authority does not have the information. If the authority does not have the information you ask for, it should tell you promptly by sending you a notice saying it does not hold it. If it is aware that another authority has it, it should consider the best way to help you, perhaps by giving you contact details of the other authority.



- You have not provided enough detail for the authority to identify and find the information. In these circumstances, the authority may ask you for more information. If it does, the maximum 20 working day response time will start only when the authority receives that extra information from you. The authority should help you to describe more clearly what information you want.
- It will cost the authority more than £600 to provide the information. See [*What could it cost me to get the information?*](#) (page 18). In these circumstances, the authority should tell you whether it can provide any of the information within the cost limit of £600 or advise you about how you could change your request to bring it within the £600 limit.
- The authority believes your request is “vexatious”. This term could be used to describe requests where the impact would be to disrupt the authority’s work (even if you didn’t mean to). A public authority cannot decide your request is vexatious simply because it finds you or your request irritating or a nuisance.
- You have asked for information that has already been given to you or for information that the authority has already refused to give you, and a reasonable period of time has not passed since your last request (this is called a “repeated request”). This refusal should not happen if the information has changed since you first asked for it.
- You have asked for the information to be given to you in a format that the authority cannot reasonably provide.
- If the authority decides to refuse your request, or part of your request, for any of the above reasons, its reply to you must:
 - be sent in writing within 20 working days of receiving your request
 - state clearly the reasons for the refusal (including any legal reasons)
 - tell you how to appeal against this decision.

For more information, see [*What if I am unhappy with the reply?*](#) (page 23)



What could it cost me to get the information?

Published information

Most of the information that an authority publishes under the “publication scheme” duty (that is, information it makes available without you having to ask for it) is free of charge or available for a small fee. If there is a charge, the authority’s Guide to Information must show details of the charges.

See *The “publication scheme” duty: what is it and how can it help me?* (page 11)

The charge for providing some information, for example birth, marriage and death certificates, may be set by other laws.

If you have a disability which means that you need information in a particular format, an authority cannot charge you for what it had to pay to provide it in that format.

Requests for information not already published

Most responses will give you information free of charge. If a fee is charged, it is likely to be small.

Authorities are allowed to charge in certain circumstances but, in practice, you’ll find that most authorities do not charge for responding to a request.

If you have a disability which means that you need information in a particular format, an authority cannot charge you for the costs of providing it in that format.

What is the most I would have to pay?

An authority cannot charge you for the first £100 it costs to find and provide you with the information. So, if the cost to the authority of providing the information to you is £100 or less, you will get it free of charge.

If the cost to the authority is more than £100, but up to and including £600, the authority can charge you 10% of the cost of providing the information (the first £100 worth is always free). So the maximum an authority could charge you would be £50 (this would be where the cost to the authority is £600).



For example, if the cost to the authority is £200, it can only charge you £10 (10% of the difference between £200 and £100).

If the total cost to the authority is more than £600, the authority can refuse your request. In doing so, it should offer to advise you how to reduce the costs by making changes to your request. Authorities can choose to respond to requests which cost more than £600 if they want to, but they may first ask you to pay the full costs above the £600 limit.

The authority must tell you if it is going to charge by sending you a “fees notice” (see next section) within 20 working days of your request. If it does, the time between issuing the notice to you and receiving your payment does not count towards the 20 working days the authority is allowed to respond to your request. So for example, if an authority sends you the fees notice 10 working days after getting your request, the authority still has another 10 working days left to respond to your request when it gets your payment.

What is a fees notice?

A fees notice is a notice that shows the estimated fee and how it has been calculated. It also tells you how you can complain about the fee and appeal against it. A fees notice is often in the form of a letter but it must say clearly that it is a fees notice.

In working out the fee, the authority can charge you for:

- staff time to find and gather the information up to a maximum of £15 per hour
- reasonable costs for photocopying or providing it in another format if you want a copy of the information.

For example, if an authority normally charges 10p a page for photocopies, charging any more than that would not be reasonable; or if it provides it on a CD, it can only charge you the cost of buying the CD.

An authority cannot charge you for staff time or any other costs associated with deciding whether it has the information or if any exemptions apply.

An authority cannot increase the fee if the actual cost turns out to be more than it estimated in the fees notice. If the cost turns out to be less than it estimated, it should consider refunding any overpayment you have made.

When you get the fees notice, it is up to you whether you want to pay for the information. You must pay the authority before it will provide the information. If you decide not to pay the fee, then the authority does not have to send you any information.

If you decide to pay the fee, you should do so within three months of the date on the fees notice, otherwise the authority does not have to respond to your request.

If you are unhappy with the fees notice, you can ask the authority to review its decision about how much it wants to charge you for the information. The fees notice should tell you how to do this.



Any questions?
Get in touch, we are happy
to help. See page 37 for
contact details



Is there information I may not be able to see?

You can ask Scottish public authorities for any information they hold. But some information may not be given to you because it is exempt under FOI law – authorities do not have to disclose exempt information to you.

If the authority decides information is exempt, it must tell you why. You should not be put off asking for information just because you think it may be exempt. Even if the information falls within one of the exemptions in the FOI Act, the public authority might still be willing to let you have all or part of it.

Some categories of information are completely excluded from your rights of access, for example, documents prepared for court cases.

Other categories of information may be exempt in circumstances where the authority can prove there would be real and significant damage to the authority or to other people if the information were made public. (The authority may call this **“substantial prejudice”** in its letter to you.) This may include information which is commercially valuable or information that is confidential.

When an authority gives you information, it is the same as making the information publicly available. This means that, when deciding whether to give you information that may be covered by an exemption, the authority must consider whether it would be in the **“public interest”** for the information to be made public. What **“being in the public interest”** means is that the benefit to the public from disclosure is greater than the harm to the authority or other people affected.

There are also some categories of information which authorities are generally allowed to keep back, even if there would be no damage to the authority or to other people if the information were made public. This includes, for example, information about the development of government policies. Information in these categories must still be released if it is in the public interest to do so.

In deciding whether it is in the public interest to provide information, authorities should not take into account:

- the possibility of embarrassment to officials
- the possible loss of confidence in the authority
- the seniority of the people involved, or
- the risk of anyone misinterpreting the information.

If it refuses your request, the authority must tell you which exemption it has applied to the information. Unless the exemption relates to a category of information that is completely excluded from your rights of access, the authority must tell you why it thinks there is greater public interest in withholding the information than in making it available. It must explain the reasons for this decision.

If your request is for a combination of information that can be disclosed and information that is being withheld, the authority should, where possible, remove information that is exempt and give you the rest. If information is removed, the authority must still explain the reasons for removing it. Sometimes information cannot be removed easily so it may be “redacted”. This means it is “blacked out” so you can’t read it.



What if I am unhappy with the reply?

When you request information, the authority must either:

- give it to you, or
- send you a notice telling you why it is not giving it to you.

In either case, the authority must reply as soon as possible, and certainly within 20 working days (remember to allow time for letters to arrive in the post).

You can ask the authority to review its decision if it does not respond or you are unhappy with the way it has dealt with your request, for example by:

- refusing to give you some or all of the information
- failing to reply to you within the time limit allowed
- claiming the information is exempt
- failing to give you advice about, and help with, making your request
- asking you to pay a fee that you feel is unreasonable.

Any notice sent to you by the authority must tell you how to use its review procedure.

How do I ask the authority to review its decision?

Your request for a review must be in writing, or any other form that can be kept for future use, for example email or a recording on audio or video tape.

You must give your full name, an address for correspondence, and details of your original request. You must tell the authority why you are unhappy with the response to your original request. If you don't the authority can refuse to carry out a review.

You should ask for the review no later than 40 working days after:

- the end of the period for responding to your request if the authority did not reply, or
- the date the authority responded.

If you are late in asking, the authority does not have to carry out a review, but can do so if it wants to.

The authority and the Scottish Information Commissioner can give help if you need advice about asking for a review. See [*Where can I get further information and help?*](#) (page 37)

The authority should reply promptly in writing to your request for a review, taking no longer than 20 working days.

What kind of reply can I expect to my review request?

You should receive one of the following within 20 working days of asking for a review:

- All the information you asked for.
- Some of the information you asked for, with an explanation as to why the authority has kept the rest of it from you.
- A notice from the authority, confirming that it still intends to keep the information from you and saying why.
- The authority's decision about the level of fee to be charged, if your reason for requesting the review was that you were unhappy about the fees notice.
- A notice giving you a decision on your request, if the authority did not reply to your original request.
- A notice from the authority telling you it's not going to carry out a review because your request was vexatious, or was a repeat of a request you had made before. There's more information about vexatious or repeated requests in [*Why might my request be refused?*](#) (page 16)

In each case, the authority must reply promptly, and within 20 working days of its receipt of your request for a review. If you don't get any response to your request for a review, you should treat this as a refusal to supply the information. Any notice withholding information or refusing to respond to your information request must tell you about your right to appeal to the Scottish Information Commissioner if you are unhappy with this decision. See [*What if I am unhappy with the review of my request?*](#) (page 25)



What if I am unhappy with the review of my request?

If you are still unhappy with the authority's handling of your request, the next step is to appeal to the Scottish Information Commissioner. You can appeal to the Scottish Information Commissioner if:

- you are unhappy with the outcome of an authority's review
- the authority refuses to review its decision because it says your request is “vexatious” or “repeated”. See [Why might my request be refused?](#) (page 16) for an explanation of what this means
- the authority hasn't responded to your request for review.

The Commissioner cannot take action until you have asked the authority to review its decision and allowed 20 working days for it to reply.

If the authority replies before the 20 working days are up, you can go straight to the Commissioner. When calculating working days remember to allow time for posting.

What is the role of the Scottish Information Commissioner?

The Scottish Information Commissioner is impartial and independent of the Scottish Government, the Scottish Parliament, and other Scottish public authorities. This means the Commissioner cannot be told what the outcome of an appeal must be, but decides it based on the evidence and arguments from both the requester and the authority.

The Commissioner's duties include:

- telling people about their right to see information held by Scottish public authorities
- making sure public authorities follow the FOI Act and the Environmental Information (Scotland) Regulations 2004
- monitoring FOI and encouraging public authorities to have and follow procedures for making their information available to you
- making sure public authorities publish information under the “publication scheme” duty (page 11)
- carrying out investigations when information has not been provided on request.

How do I appeal to the Commissioner?

If you can, use our online appeal service at www.itspublicknowledge.info/appeal. It gives you help as you go along, and explains exactly what we need so the Commissioner can investigate your case quickly.

Alternatively, you can download a copy of our application form at <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx>, or call us on **01334 464610** and we will send you a copy.

You must appeal to the Commissioner within six months of receiving the review decision from the authority. If the authority did not carry out a review or failed to tell you the outcome of the review, you should appeal within six months of the date by which it should have replied to you (20 working days after you asked it to review its decision).

If you choose not to use the online service or the application form, you risk making an invalid appeal that we can't accept. The appeal must be in a format that can be kept for future use, for example, in writing, by e-mail or a recording on audio or video tape.

It must include:

- your full name and an address for correspondence
- details of your original request
- why you are unhappy with the way it was dealt with by the public authority
- why you are unhappy with the outcome of the review

You should include copies of the correspondence you have had with the public authority about your request (your original request for information, your request for a review and the authority's responses).



What happens if I appeal to the Commissioner?

The Commissioner will investigate your complaint if it is “valid”. A valid appeal is one where you have been all the way through the authority’s review procedure; where you provided the Commissioner with the information needed to investigate your complaint; and where you have told the Commissioner what you are unhappy with. You are most likely to make a valid appeal if you use the Commissioner’s online appeal service. See [How do I appeal to the Commissioner?](#) (page 26)

If the Commissioner investigates your appeal there will usually be one of three outcomes:

1. The Commissioner may decide that the authority failed to follow the FOI Act and send you and the authority a formal decision notice. This will set out what steps the authority must take. These could include, for example telling it to give you all or some of the information you asked for. If the authority fails to take these steps, the Commissioner can refer the case to the Court of Session. The Court could treat it as contempt of court and give the authority an unlimited fine.
2. The Commissioner may decide that the authority followed the FOI Act properly and send you and the authority a formal decision notice explaining why.
3. The Commissioner might suggest a way to resolve matters without a formal decision. She will only stop investigating if you agree, and withdraw your appeal.

The Commissioner does not have to carry out, or continue with, an investigation if:

- you have not already asked the authority for a review and waited for the response
- your appeal is “frivolous” (not a serious request for information) or “vexatious” See [Why might my request be refused?](#) (page 16) for an explanation
- you withdraw or abandon your appeal.

If the Commissioner does not intend to investigate your case, you will be told why.

Does the Commissioner have the final say?

There are two circumstances where the Commissioner does not have the final say.

You and the authority have the right to appeal to the Court of Session if you think the Commissioner made a mistake about a point of law. The Court may reach a different decision or tell the Commissioner to reconsider the appeal.

In some very limited circumstances, the First Minister has the power to issue a “ministerial certificate” which has the effect of overturning a decision notice issued by the Commissioner. If this happens in your case, the Commissioner will tell you.

Cases where you cannot appeal to the Commissioner

You cannot appeal to the Scottish Information Commissioner if your original request was to:

- a procurator fiscal and in most cases, the Lord Advocate. The Commissioner can compel these authorities to respond to a request or request for review, but not investigate appeals.
- the Scottish Information Commissioner herself. (As with any other public authority you can ask the Commissioner to review her original decision not to provide the information you requested, but if she decides that her original decision was correct, you cannot take your appeal further.)

In these circumstances, your only option is to challenge the decision of these organisations by asking the Court of Session for a judicial review. If you want to do this, you should get independent legal advice as neither the Commissioner nor the authority can give you advice.



What if I am unhappy with the Scottish Information Commissioner's decision?

If you are unhappy with a decision issued by the Scottish Information Commissioner, you may be able to take the matter to the courts but only if you think the Commissioner made an error in the way the law was applied. If you are unhappy with the service you received from the Commissioner, you should contact the Commissioner's office to complain. If you remain unhappy with the service you can complain to the Scottish Public Services Ombudsman. See *Complaining to the Scottish Public Services Ombudsman* (page 30).

Going to the courts

You can appeal to the Court of Session against a decision by the Commissioner, but only on a point of law, not just because you disagree with the outcome. The point of law could be, for example, that the Commissioner adopted the wrong definition of a legal term or concept, or misinterpreted the Act or her powers. The public authority concerned also has the right to appeal against a decision by the Commissioner, but again only on a point of law.

If you are thinking about an appeal or a judicial review, you should get legal advice.

Complaining to the Scottish Public Services Ombudsman

If you are unhappy with the service provided by the Scottish Information Commissioner, you may be able to complain to the Scottish Public Services Ombudsman.

The Ombudsman will expect you to have complained to the Commissioner about the service first. If you remain unhappy after having made a complaint to the Commissioner, you can then complain to the Ombudsman. See *Where can I get further information and help?* (page 37)

The Ombudsman will not consider:

- a matter that you could take to a court (see above)
- in general, a properly made decision that the Commissioner has a right to make even if you disagree with it.



Any questions?
Get in touch, we are happy
to help. See page 37 for
contact details



What about my right to see environmental information?

If the information you want is about the environment, the authority will respond under separate environmental information rules, not the FOI Act. They are called the Environmental Information (Scotland) Regulations.

The rights provided by these regulations are similar to those you have under the FOI Act, but there are important differences you should be aware of. These are explained below.

What is “environmental information”?

The regulations give you a right to access environmental information.

Environmental information covers a broad range of topics, such as:

- the environment itself, including air, water, earth and the habitats of animals and plants
- things that affect the environment, such as emissions, radiation, noise, and other forms of pollution
- policies, plans and laws on the environment.

Examples of environmental information are:

- levels of chlorine in swimming pools
- water and air-quality test reports
- genetically modified crops
- air-conditioning systems in public buildings.

For more examples of environmental information, please see page 08

Which organisations can I ask for environmental information?

The environmental information rules apply to all the Scottish public authorities described earlier in this guide. See *Which organisations can I ask for information?* (page 09).

They also apply to:

- any person or body providing public environmental services that is controlled by one of the Scottish public authorities covered by the FOI Act, and
- any other person or body providing public services in Scotland.

This means you may also be able to get information from private organisations, companies or public-private partnerships providing services such as social housing, waste disposal, water, energy, and transport.

How do I ask for environmental information?

Requests for environmental information can either be in writing (or other recordable format) or verbal (e.g. by phone or in person).

It is a good idea to send your request by email, letter or other recorded format, and to keep a copy, just in case things go wrong. If you made a verbal request, it is also a good idea to ask for a receipt and to follow-up with a written request to confirm what you asked for.

If you are unsure about whether the information you want is environmental, or if you want to ask for information that might be both general and environmental, you should make your request in writing. The organisation receiving your request will decide whether it should be dealt with under the environmental information rules or the FOI Act.

Apart from this, the rules about asking for environmental information are the same as for other types of information. Staff in the organisation receiving your request should give you any help or advice you need. See the section [*How do I ask for information?*](#) (page 13)

What happens after I've made a request for environmental information?

The organisation should reply to your request for information as soon as possible and usually within 20 working days.

When may I have to wait more than 20 working days?

If you make a request for a lot of complex information, the organisation is allowed up to 40 working days to reply. If it will take longer than 20 working days to provide the information, the organisation must let you know within 20 working days of receiving your request.



What kind of reply can I expect?

After 20 working days (remember to allow three days for posted letters to arrive), normally you will have received one of the following:

- All the information you asked for
- Some, but not all, of the information. See *Is there environmental information I might not be given?* (page 34)
- A fees notice, if there is a charge for the information. See *What could it cost me to get environmental information?* (see below)
- A refusal. See *Why might my request for environmental information be refused?* (see below)
- No response, which you should treat as a refusal. See *What if I am unhappy with the response to my request for environmental information?* (page 36)

Why might my request for environmental information be refused?

Information should usually be given to you, but in some circumstances your request may be refused.

The organisation is allowed to refuse your request if:

- The information is excepted from the Environmental Information (Scotland) Regulations 2004. See *Is there environmental information I might not be given?* (page 34)
- The organisation does not hold the information you asked for.
- Finding or preparing the information would cause an unreasonable amount of work and disrupt the organisation's services.
- Your request is so general the information cannot be identified and the organisation has done all it can to advise and assist you.

What could it cost me to get environmental information?

There should be no charge for:

- looking at public registers
- looking at information on the authority's premises or at an information service centre.

In any other case, the organisation can choose to make environmental information available free of charge or to charge a reasonable fee. If fees are to be charged, the organisation must set out clearly (for instance, in a leaflet or on the authority's website) when a fee may be:

- charged
- waived
- payable in advance.

The organisation must not charge you more than it will cost to provide the information.

If you feel the fee is unreasonably high, you can ask the organisation to review it. If, after the review, you still feel it is too high you can appeal to the Scottish Information Commissioner. See *What if I am unhappy with the reply to my request for environmental information?* (page 36)

Is there environmental information I might not be given?

You have a general right to see all recorded environmental information held by organisations covered by the environmental information rules. However, environmental information may be kept from you in particular circumstances if the organisation believes that giving it to you would cause real harm. (The organisation may call this “**substantial prejudice**” in its letter to you.)

This kind of “exception” may cover information which:

- relates to international relations, defence, national security or public safety
- relates to the course of justice, the ability of someone to receive a fair trial, or the ability of a Scottish public authority to conduct an inquiry of a criminal or disciplinary nature
- is commercially valuable or confidential
- includes details of sensitive environments, for example, the location of a bird-of-prey nesting site, or where giving the information may lead to harm or pollution
- is currently incomplete, e.g. ongoing research.



When deciding whether or not to give you information covered by one of these exceptions, the organisation must decide whether the “public interest” lies in withholding or disclosing it. See page 34 for more information about how they make this decision.

If your request is refused, the organisation must tell you which exception it applied to the information. It must also tell you why it thinks there is greater public interest in keeping the information secret than in making it available. It must explain the reasons for this decision. You should not be put off applying just because you think an exception may apply. Even if the information is ‘excepted’ under the rules, the organisation can choose to let you have it, or some of it.

If some of the information you have asked for will be disclosed and some withheld, the organisation should, where possible, remove information that is excepted and give you the rest. If information is removed, the organisation must still explain the reasons for removing it.

There are special rules for information about emissions into the environment. The organisation can usually provide it, even if the information would normally be kept from you because, for instance, it is commercially sensitive. This will not always be the case as other exceptions may apply. If you need advice about this contact the authority or the Scottish Information Commissioner.

What if I am unhappy with the reply to my request for environmental information?

You can ask the organisation to review its decision if it does not reply to you or you are unhappy with how it has dealt with your request, for example by:

- refusing to give you all or some of the information, e.g. because it falls under one of the exceptions
- failing to reply to you within the time limit allowed
- failing to give you advice and assistance in making your request
- asking you to pay a fee that you feel is unreasonable.

The procedures for asking for a review or making an appeal are described fully in the section *What if I am unhappy with the reply?* (page 23) and *What if I am unhappy with the review of my request?* (page 25).



Where can I get further information and help?

For information, advice and assistance about freedom of information in Scotland, contact:

Scottish Information Commissioner

Kinburn Castle, Doubledykes Road
St Andrews, Fife KY16 9DS

t 01334 464610

f 01334 464611

e enquiries@itspublicknowledge.info
contactSCOTLAND-BSL

www.itspublicknowledge.info

You can also visit the “Your Rights” section of the Commissioner’s website for information on your rights and how to use them, plus a handy calculator to help you check when you should receive a response to a request:

www.itspublicknowledge.info/YourRights

A list of Scottish public authorities covered by the Freedom of Information (Scotland) Act is available at: **www.itspublicknowledge.info/YourRights/Whocanlask.aspx**

UK Information Commissioner

For information, advice and assistance about freedom of information in the rest of the UK, and data protection (relating to information about you) contact the UK Information Commissioner’s office in Scotland at:

The Information Commissioner’s Office

Wycliffe House
Water Lane
Wilmslow SK9 5AF

General enquiries:

t 0303 123 1113

f 01625 524 510

e casework@ico.org.uk

www.ico.org.uk

The Information Commissioner’s Office Scotland

45 Melville Street
Edinburgh EH3 7HL

t 0303 123 1115

e scotland@ico.org.uk

The Scottish Public Services Ombudsman

If you are unhappy with the service provided by a public authority, you may be able to complain to the Scottish Public Services Ombudsman:

The Scottish Public Services Ombudsman

FREEPOST EH641

Edinburgh

EH3 0BR

t 0800 377 7330

f 0800 377 7331

e www.spsso.org.uk/online-contact

www.spsso.org.uk

Before complaining to the Ombudsman, you should first go through the formal complaints procedure of the public authority.

Equality Advisory and Support Service

For advice and information on human rights or equality matters, or for information on your legal rights if, for example, you have a disability, contact:

Equality Advisory Support Service

FREEPOST FPN4431

t 0808 800 0082

Textphone 0808 800 0084

www.equalityadvisoryservice.com

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

e enquiries@itspublicknowledge.info

contact
SCOTLAND
BSL

www.itspublicknowledge.info

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FW: Scottish Ministerial Code

Date: Thu, 15 Oct 2020 09:18:55 +0000

Dear Mr Aberdeen,

Thank you for your email and apologies for the length of time it has taken for the letter to reach you. [REDACTED]

[REDACTED] I completely understand that the current Covid restrictions have meant that your opportunities to receive the letter are currently more limited than usual.

Mr Hamilton is happy to provide clarification on his letter and the work he is undertaking, but would prefer to do so in writing as this ensures there is a record of the discussions. Would you be able to provide questions in writing for Mr Hamilton's consideration?

Best wishes,

[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: 13 October 2020 12:50
To: 'James Hamilton' <[REDACTED]@[REDACTED]>
Subject: FW: Scottish Ministerial Code

Response from Mr Aberdeen.

-----Original Message-----

From: Geoff Aberdeen [REDACTED]
Sent: 13 October 2020 12:47
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Scottish Ministerial Code

FAO James Hamilton

Dear Mr Hamilton

I have today received your letter of 8 September concerning the First Minister's self-referral under the Ministerial Code. [REDACTED] and, given the current restrictions on employees, it only came to my attention today.

I am, of course, willing to assist your enquiries but I would welcome a call with you in the first instance to discuss the best way for me to do this.

Perhaps you or your team can contact me using this email address to arrange this?

If there is any requirement for you to send me hard copy information going forward please do so by sending it to the following address:

[REDACTED]

I look forward to hearing from you.

Best wishes

Geoff Aberdein

Sent from my iPad

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

From: [REDACTED]
Sent: 15 October 2020 16:34
To: 'James Hamilton' [REDACTED]
Subject: Personal- written submission

Dear James,

I have tried an alternative format for putting the FM's statement into a password protected document- please see attached. Can you let me know if you are able to view the contents of the file?

Best wishes,

[REDACTED]

9 October 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: SELF REFERRAL

Thank you for your letter of 8 September. Please find enclosed the following:

Annex A: I have provided, as requested, a general statement about my actions and involvement in the matters covered by your remit. Please note that I have also provided this statement to the Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints (hereinafter referred to as "the Committee").

Annex B: I have enclosed a transcript of WhatsApp messages between myself and Alex Salmond. This information has also been provided to the Committee and I was advised by the clerks that Mr Salmond has asserted legal privilege over the message from him to me dated 16 July 2018 and asked for it to be redacted.

Annex C: A copy of my covering letter to the Committee dated 4 August 2020. The letter is enclosed for completeness. It covers matters that you may consider go beyond your remit but also some information that appears to me to fall within it and which you may find helpful.

As you may be aware, my submission to the Committee has now been published - however, I thought it would be helpful to attach it here for ease of reference.

I will now turn to the specific questions in your letter. Most of them are addressed in the Annexes attached - however, where it seems you are requesting additional information or that I can usefully expand on any points, I will do so below.

Please note that in the Annexes detailed above and in the answers below, I have taken care not to provide any information that would seem to me to risk breaching the order of the High Court in *HMA v AEA Salmond*. If, as a result, it appears to you that there are questions I am not answering directly, I would be happy to discuss this further with you.

Question 1

All of my contacts with Mr Salmond between 16 January and 18 July 2018 are detailed in Annex A. You will note from that account that after my final conversation with him on 18 July, he sent me two further messages - on 18 and 20 July. These are included in Annex B. I did not respond to these messages.

I can confirm that I have had no contact with Mr Salmond - direct or indirect

- since. Question 2

I met with Geoff Aberdein, former Chief of Staff to Mr Salmond, in my office in Parliament on 29 March 2018. The circumstances and nature of this meeting are set out in Annex A.

He was mainly, as I recall now, seeking to persuade me to meet with Mr Salmond. I think the assumption in my mind at the time of this discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the matter raised by Sky News in the query a

few months earlier. [REDACTED]

[REDACTED] this would have meant nothing to me as I had not been aware of any such instance. The reference however makes sense in light of what Mr Salmond told me on 2 April.

As I set out in Annex A, I had forgotten about this encounter until I was reminded of it in early 2019. Since the publication of my evidence to the Committee, it has been asked of me how it is possible that I could have forgotten such an encounter.

It is obviously not possible for anyone to be certain of the reasons for forgetting an event. But the reasons I think this meeting was not engraved in my mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are alluded to in my Committee submission, and it may be helpful for me to expand.

Firstly, by the time I met with Mr Aberdein, I already had what I describe as a 'lingering concern' that allegations may emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with me - had it been, my memory may have been more vivid. But the second, and perhaps more relevant factor is that my meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told me the details of the actual complaints against him and his response to them. I think it is because this was such a shock to me that the earlier meeting was overwritten in my mind.

Question 3

There were no meetings - other than those I have declared - between anyone representing me and Mr Salmond.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Question 4

A summary of the purpose of, and participation in, each of the contacts is provided in Annex A. The messages at Annex B also include relevant detail. I expand on the purpose of and reasons for each of the contacts in my response to Question 5.

However, I include under this question detail of the following: who initiated each meeting; how long (as far as I can recall) each contact lasted; and who was present.

I did not make a record of any of the contacts. However, I gave a verbal account of each of them to my Chief of Staff.

2 April

This meeting was initiated by/ on behalf of Mr Salmond. The others present in my home throughout - though only involved in part of the discussion - were my Chief of Staff, Geoff Aberdein and Duncan Hamilton (who I believe was acting in a legal capacity for Mr Salmond). I had not been aware in advance that Mr Hamilton would be in attendance. My recollection is that Mr Salmond, Mr Aberdein and Mr Hamilton were present in my home for an hour or two. My Chief of Staff was there longer as we had other matters to discuss.

At the meeting, Mr Salmond shared the details of the complaints with me and gave me his response to them - part of this was that he had previously apologised for an aspect of one of them. He also told me that he intended to seek a process of mediation with the complainers. As it was clear to me then that these were complaints under the Scottish Government 's Procedure, I knew I had no role and would not be made aware by the Permanent Secretary until any investigation concluded. I was clear to Mr Salmond that I would not intervene.

23 April

The call was initiated by Mr Salmond. My Chief of Staff was in the room with me during this call but not on the line. I think it lasted around 10/15 minutes in total.

7 June

Mr Salmond requested this meeting. I initially declined but, for reasons set out below, later agreed to it. Mr Salmond and I were the only attendees. My Chief of Staff was aware of the meeting but not present - though she did interrupt to bring it to an end as I had other matters to attend to.

14 July

This meeting should probably be described, for the following reasons, as initiated partly by Mr Salmond and partly by

[REDACTED]

Mr Salmond and I were the only attendees at the meeting on 14 July. I think the meeting lasted around an hour.

18 July

This call was initiated by me. No one else was on the line or present during it. It lasted around 10/15 minutes.

Question 5

After the meeting of 2 April, it was not my intention to meet with or speak to Mr Salmond about the matter again.

My reason for agreeing to the call on 23 April is not dissimilar to the reasons I agreed to the 2 April meeting.

When he contacted me on 22 April, I again thought it possible that he was intending to respond in a way that would make the matter public. To explain, it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from SNP while I fight to clear my name' or even a partial mea culpa 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what I assumed he would eventually do.

As Party Leader, I was keen not to be blindsided by such a development, and that is why I agreed to the call.

However, on the call he asked me to advise the Permanent Secretary that I knew of the investigation and persuade her to accede to his request for mediation. I told him emphatically that I would not do so.

When he contacted me on 31 May seeking a meeting, I initially resisted. I still thought it possible that he might 'go public', but the content of our conversation on 23 April and the tenor of his messages to me on 31 May/1 June made me think this was unlikely at that stage.

Therefore, my intention was to decline this meeting request.

However, the tone and content of his message of 3 June changed my view of the matter. The tone of it seemed almost intimidatory and the content made clear he was considering legal action. As a result, I decided to inform the Permanent Secretary.

This was not a decision I took lightly - as I set out in my general statement and below, my decision not to inform the Permanent Secretary of my knowledge, also not taken lightly, had been about protecting the integrity and confidentiality of the process.

I decided to make it known to him that I had informed the Permanent Secretary, and make clear again that I would not intervene as he wanted me to. I indicated to the Permanent Secretary in my letter to her that I intended to have such a conversation with him.

I felt it important to do this, firstly, because Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. I wanted to leave no room for misinterpretation.

Also, I believed it highly likely that our paths would cross towards the end of that week at the SNP Conference (as it turned out, I don't think he did attend), and I considered that speaking to him in a planned way was better than him trying to 'corner' me.

As for the content of the meeting on 7 June, I advised him of the action I had taken and made clear again that I was not prepared to intervene in the process. He wanted to give me a document to take away which I believe was a legal opinion he had obtained. I declined to do so. He stated his intention to take legal action if necessary. I expressed an opinion that given the seriousness of the complaints he should consider addressing the substance of them.

By the time of the meeting on 14 July, I was again concerned that the matter might become public. As set out above, I always thought it possible, even likely, that this was the course Mr

Salmond would ultimately take. And had he taken legal action - which I knew he was considering - this could also have put matters into the public domain.

At that meeting, he told me he was asking the Scottish Government to agree a process of arbitration. For reason that I didn't understand then - and don't understand now - he believed I was blocking this. I told him that wasn't so as I had no involvement in the process.

I suggested again that he should address the substance of the complaints rather than simply focusing on procedure.

Although he indicated he would reflect on this, he was focused on his request for arbitration and seeming unwilling to accept that I would not put pressure on the Permanent Secretary to accede to it.

By this time, it was clear that my relationship with Mr Salmond was breaking down. He was clearly upset and angry that I was not assisting him to achieve the outcome he wanted.

I was also upset with him. The nature of the complaints against him and the account he had given me of one of them had badly shaken my faith in him.

However, in spite of that, I did not want our relationship to break down completely. He had been my friend and colleague for 30 years.

It was this that prompted my call to him on 18 July. I wanted to draw a line under our contact about the matter. I was also about to take a short summer break and I didn't want it interrupted by contact from him. However, I think I was also hoping to make him understand and accept why I couldn't and wouldn't intervene.

Question 6

I advised the Permanent Secretary of the meeting on 2 April and the call on 23 April, in my letter to her of 6 June 2018 (I do not personally hold a copy of this letter - it is held by the Scottish Government and I understand that it has been provided to you by the Permanent Secretary).

My letter indicated that I intended to speak to Mr Salmond again, which I did on 7 June. I later told the Permanent Secretary that I had done so, though we did not have any detailed discussion about it.

I advised her on 16 July of my meeting with Mr Salmond on 14 July and made her aware of his belief that I was blocking arbitration. I made clear to her again that I had no view on the matter and the decision was hers alone. I also told her - I think on my return from annual leave - that I had spoken to him on the phone on 18 July, but I did not discuss the details.

The Permanent Secretary wrote to me on 17 August 2018 informing me that she intended to seek [REDACTED].

She then wrote to me on 22 August 2018 - in line with the Procedure - informing me that she had concluded the investigation, upheld certain complaints and referred the matter to the police.

I assume the letters of 17 and 22 August will be provided to you by the Permanent Secretary if required.

At every stage of my contacts with Mr Salmond I considered the obligations of the Ministerial Code - and my obligations as First Minister more generally. I gave particular consideration to the Code after the meeting on 2 April and discussed this with my Chief of Staff.

It seemed to me then - and I believe this to be the case now - that the Code does not envisage or provide for the particular circumstances of the situation I was faced with. In truth, it felt to me that I was in a Catch 22 situation - had I relied on the relevant parts of the Code, I would have compromised the confidentiality and independence of the process. And if I decided - as I did because I consider it to be the case - that the Code does not provide for the circumstances of this situation, I could find myself accused of breach, as indeed has happened. The judgment I made was that the integrity, independence and confidentiality of the process was paramount.

To explain more fully, the relevant sections of the Ministerial Code, which I consider to be sections 4.22 and 4.23, seek to guard against undisclosed outside influence on decisions that Ministers are involved in and likely to have an influence on. It seemed to me that this was the opposite situation. This was a decision I was excluded from - indeed not meant to know about at all - and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation became aware of my knowledge of it.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond

- once notified - would have had to be made public. There would have been media interest had a meeting between me and Alex Salmond appeared in my published diary, and it was not clear to me how I could have addressed the questions that would have been asked, without in the process compromising the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process - in the interests of the complainers, the government and Mr Salmond himself, was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.

Question 7

I discussed matters with my Chief of Staff throughout – in particular in relation to the Ministerial Code. I did not ask the Permanent Secretary, any civil servant or other special adviser for advice. I would point out that this was in the context of seeking to protect the confidentiality of the process.

I hope I have addressed all your questions. I am, of course, happy to expand on any point should you find it helpful and to discuss all matters further in interview with you.

Your sincerely

NICOLA STURGEON MSP

ANNEX A

Alex Salmond told me on 2 April 2018 at a meeting at my home that complaints against him were being investigated under the Procedure. At that meeting, he showed me a copy of the letter he had received outlining the detail of the complaints.

As has been reported already, four days earlier - 29 March 2018 - I had spoken with Geoff Aberdein (former Chief of Staff to Alex Salmond) in my office at the Scottish Parliament.

Mr Aberdein was in Parliament to see a former colleague and while there came to see me.

I had forgotten that this encounter had taken place until I was reminded of it in, I think, late January/early February 2019.

For context, I think the meeting took place not long after the weekly session of FMQs and in the midst of a busy day in which I would have been dealing with a multitude of other matters.

However, from what I recall, the discussion covered the fact that Alex Salmond wanted to see me urgently about a serious matter, and I think it did cover the suggestion that the matter might relate to allegations of a sexual nature.

[REDACTED]

The impression I had at this time was that Mr Salmond was in a state of considerable distress, and that he may be considering resigning his party membership.

However, while I suspected the nature of what he wanted to tell me - for reasons set out below

- it was Alex Salmond who told me on the 2 April that he was being investigated under the Procedure - and what the detail of the complaints was. It is this meeting – due to the nature of the information shared with me at it - that has always been significant in my mind.

As stated above, I suspected the reason Alex Salmond wanted to see me on April 2 was that he was facing an allegation of sexual misconduct.

Although my contact with Mr Aberdein on 29 March 2018 may have contributed to that suspicion, it was not the only factor.

For example, in early November 2017, the SNP received an enquiry from Sky News about allegations of sexual misconduct on the part of Alex Salmond.

I spoke to Mr Salmond about this allegation at the time. He denied it and, as it happened, Sky did not run a story about it at that time. Since the identity of the individuals was not made known to us and they did not approach the SNP directly, there was no further action that it would have been possible to take.

However, even though he assured me to the contrary, all of the circumstances surrounding this episode left me with a lingering concern that allegations about Mr Salmond could materialise at some stage.

It is reasonable to ask why, if I suspected the nature of what he wanted to speak to me about on 2 April, I nevertheless agreed to the meeting.

The answer is both political and personal.

I thought Mr Salmond may be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that we would require to respond to.

As Party Leader, I considered it important that I knew if this was in fact the case in order that I could prepare the party to deal with what would have been a significant issue.

There is also the personal aspect. Mr Salmond has been closer to me than probably any other person outside my family for the past 30 years, and I was being told he was very upset and wanted to see me personally.

To return to the meeting on 2 April 2018, although others were present, Mr Salmond initially asked to see me privately.

He advised me that he was being investigated under the Procedure and showed me a copy of the letter he had received.

Notwithstanding the suspicions I had harboured going into this meeting, I was shocked and upset by the reality of what I read.

He gave me his reaction to the complaints - in the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again - and said that it was his intention to seek a process of mediation between himself and the complainers.

It was also clear - contrary to what I had anticipated - that he did not intend to resign his party membership or do anything to make the matter public at that stage.

I made clear to him that I had no role in the process and would not seek to intervene in it.

I took no action as a result of this meeting.

Mr Salmond sent me a message on 22 April 2018 asking to speak to me by phone.

As previously advised to Parliament, I spoke to him by phone on 23 April (the substantive call took place early evening after a call in the morning had to be aborted due to poor signal).

He asked me if I would make the Permanent Secretary aware that I knew about the investigation and encourage her to accept his request for mediation.

I said that I was not willing to do so. A special adviser was in the room with me during this call, though not on the line.

Mr Salmond sent me a message on 31 May 2018 asking

to meet. I did not agree to a meeting at that time.

Mr Salmond sent me a further message on 3 June 2018.

Both the tone and content of this message led me to conclude that legal action by Mr Salmond against the Scottish Government was a serious prospect.

I decided that I should make the Permanent Secretary aware of this, and I wrote to her on 6 June 2018.

At this juncture, it may be helpful to briefly set out for the Committee why I had not previously informed the Permanent Secretary of my contact with Alex Salmond or my knowledge of the investigation.

The relevant sections of the Ministerial Code (4.22 and 4.23) seek to guard against undisclosed outside influence on decisions that Ministers are involved in. It seemed to me that this was the opposite situation. This was a decision I was excluded from and it seemed to me that the risk of inadvertently and unintentionally influencing it would arise if those undertaking the investigation were aware of my knowledge of it.

The risk - even if theoretical and subconscious - would be that considerations of what I might think would influence the decisions taken.

Further, according to my reading of these sections of the Code, my contact with Alex Salmond - once notified - would have had to be made public. This could have compromised the confidentiality of the process.

My judgment, therefore, was that the best way to protect the process was not to make my knowledge of it known. This judgment changed when I had reason to believe that legal action against the government was being considered.

Having decided to write to the Permanent Secretary, I agreed to meet Mr Salmond and sent him a message to this effect on 5 June 2018.

The references in this message to 'what I need to do' and 'update' refer to my decision to write to the Permanent Secretary.

I intended to make him aware that I had done so and, in so doing, make clear again that I would not intervene in the process.

My letter to the Permanent Secretary advises her that I intended to do this. As advised to Parliament, this meeting took place in Aberdeen on 7 June 2018. No one else was present at this meeting.

My other reason for wanting to meet with him proactively at this stage was the SNP conference that was about to take place over the following days in Aberdeen. I assumed he would be there (though as it turned out, I don't think he did attend) and I didn't want to be 'cornered' by him during it.

Mr Salmond sent me a further message on 5 July

2018. I did not respond in any way to this message

The next contact between Mr Salmond and I was on 13 July 2018, which led to our third and final meeting being arranged for 14 July at my home.

By this time, I was again anxious - as Party Leader and from the perspective of preparing my party for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

It was clear at the meeting that he was still seeking a process of arbitration around his concerns about the procedure.

He had formed a belief that it was me who was blocking arbitration. I told him that was not the case and I was not involved in the decision.

I also suggested to him that given their seriousness, he should engage on the substance of the complaints and not just focus on procedure.

Mr Salmond sent me further messages on 15 and 16 July 2018. The message of 15 July is Mr Salmond's interpretation of me saying that I was not involved in the decision.

On 16 July, I made the Permanent Secretary aware of the meeting on 14 July 2018 and the subsequent messages. I also made her aware of Mr Salmond's belief that I was blocking arbitration.

Given the risk of legal action, I did not want any suggestion that an opinion attributed to me (which I hadn't expressed) was influencing decisions I had no part in.

I reiterated to her that she must reach whatever decisions she considered appropriate and I did not seek to influence her in any way.

As advised to Parliament, I also spoke to Mr Salmond on the phone on 18 July 2018. I wanted to draw a line under our contact. I was also about to take a two day summer break and did not want him trying to contact me during it. I have not spoken to Mr Salmond since.

However, later on 18 July, he sent me a copy of a letter he had received from the Scottish Government. I did not respond to this message.

He sent me a further message on 20 July 2018. Again, I did not respond.

I have had no contact with Mr Salmond since.

ANNEX B

[22/ 04/2018, 20:31:29] Alex Salmond: it would be very helpful if I could call you on WhatsApp 10.30am and 12 noon tomorrow

[22/04/2018, 21:05:25] Nicola Sturgeon: I'll be in the car until 11 on way to Inverness- so 10.30 will be ok. I'll not be free again after that until 12.30/1. There will be others in car so I'll not be able to talk openly...it'll be later in day before I can be in private.

[22/ 04/2018, 22:03:57] Alex Salmond: In which case I will Phone just after 10.30am with update and we can perhaps speak properly later on.

[31/05/2018, 11:24:01] Alex Salmond: In Glasgow tomorrow - could we meet?

[31/ 05/2018, 11:39:09] Nicola Sturgeon: Tomorrow's very difficult - is it urgent?

[31/ 05/2018, 11:45:01] Alex Salmond: Next few days. I could do tomorrow evening or Monday from lunchtime onwards.

[31/ 05/2018, 11:46:29] Nicola Sturgeon: The only time I could possibly do tomorrow is around 4. Is it about what we spoke about before?

[31/ 05/2018, 11:56:46] Alex Salmond: Yes

[31/ 05/ 2018, 11:56:59] Alex Salmond: 4 is fine - same place?

[31/ 05/2018, 17:07:08] Nicola Sturgeon: Tomorrow is actually proving tricky given other stuff I've got on. I'm trying to juggle a couple of things - will confirm later/in morning if 4pm possible and if not suggest alternative.

[31/05/2018, 19:23:01] Alex Salmond: I suggest just two of us - I can leave you with some material to digest over weekend - Meeting itself need not take long but tomorrow would be best if poss.

[01/06/2018, 07:51:32] Nicola Sturgeon: Sorry but I just can't do today - I don't have time to get home given other stuff. Happy to speak on phone over weekend and see what else is possible.

[01/06/2018, 09:36:59] Alex Salmond: Phone not appropriate - there is material you need to see and assess privately. Can I come to you Sunday or very first thing Monday?

[01/ 06/2018, 13:37:54] Nicola Sturgeon: I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend.

[03/ 06/2018, 10:15:00] Alex Salmond: My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which

you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).

If you want to discuss privately then I can come to you in the North East on Monday.]

[05/06/2018, 14:02:58] Nicola Sturgeon: Hi - I have been considering your message and what I need to do in light of it. If you still want to meet, I can do tomorrow evening in Edinburgh and update you then. N

[05/06/2018, 19:24:32] Alex Salmond: Happy to meet - soonest I can get to Edinburgh is around 8.30. I take it this is totally informal, one to one.

[05/06/2018, 19:42:38] Nicola Sturgeon: Ok- happy for it to be one to one - will have to be either parliament or Bute, whatever you prefer. The alternative if its easier is Aberdeen on Thursday night - I'll be there from around 8, staying in hotel somewhere near beach ballroom I think.

[05/06/2018, 20:08:30] Alex Salmond: Yes Thursday much better, thanks. I'll be there for 8.30 to give you time to settle in.

[05/06/2018, 20:12:37] Nicola Sturgeon: Ok. It's the Hilton hotel at the beach

[05/06/2018 20:17:58] Alex Salmond: Grand

[07/06/2018, 19:00:28] Nicola Sturgeon: You should go to the Platinum reception at the back of hotel later. There's a private room arranged there for us to meet in.

[07/06/2018, 19:07:45] Alex Salmond: OK thanks. Traffic was bad but now well on the way. Should arrive c 8.40 and will give 5 minute warning on approach.

[07/06/2018, 19:09:23] Nicola Sturgeon: I'm running late too - but should be there just before you

[07/06/2018, 19:14:01] Alex Salmond: OK shall we make it 8.50 so we are not

rushing [07/06/2018, 19:25:49] Nicola Sturgeon: I'm ok for as soon as you get

there

[07/06/2018, 19:36:24] Alex Salmond: Grand

[07/06/2018, 20:46:30] Alex Salmond: Now in Aberdeen 5 minutes or so

[05/07/2018, 21:18:40] Alex Salmond: Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration. The legality will have to be resolved either

in private (in a confidential and binding arbitration)

or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

Secondly, the PS has now intimated that an FOI has been submitted. The SG response to that request is of the utmost importance. Confirmation of even the existence of a specific complaint will be sufficient to start a process which leads to the near certainty of these matters becoming public. My legal advice is that a "neither confirm or deny" response which avoids acknowledging the existence of any documents can be issued under section 18 of the FOI Act which covers S38 (1)(b) {personal information}. It is critical that this happens. There remains a way to resolve this but it requires the PS to be encouraged to accept that confidential arbitration offers the best solution and to ensure that the FOI is carefully handled. I hope you will do so but time is now very short.]

[13/07/2018, 11:01:08] Alex Salmond: Grateful for your message [REDACTED]. Happy to meet privately. Understand you are away from Monday so given developments presumably this weekend best? I have material which it is important for you to see. I will happily come to you.

(13/07/2018, 11:22:38] Nicola Sturgeon: I'm supposedly on leave from Monday but not going away - I'll be at home so could do next week if that's easier (except Thursday /Friday).
Weekend is a bit busy with one thing and another - late tomorrow afternoon probably only time that works. Let me know what you prefer.

[13/07/2018, 14:03:32] Alex Salmond: Great - can we make it tomorrow late afternoon then - I am just rearranging something and will confirm asap.

[13/07/2018, 15:13:10] Alex Salmond: Tomorrow confirmed for late afternoon. - give me your best time and place. Thanks.

[13/07/2018, 15:56:10] Nicola Sturgeon: It'll have to be my house - I should be home by 4 so that's best time. Just so you know, I have to go out again around 6.

[13/07/2018, 15:58:44] Alex Salmond: 4 it is then

[13/07/2018, 15:59:27] Nicola Sturgeon: Ok

[14/07/2018, 15:45:59] Alex Salmond: Ten minutes away

[15/07/2018, 22:42:44] Alex Salmond: Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress

things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.]

(16/07/2018, 14:57:50] Alex Salmond: Just in from Duncan to me - for your eyes only

"Senior counsel for SG has just told us he is going to take instruction direct from PS

on the
question of what attitude he is to take to arbitration. This is exactly the point at which the
FM's

position supporting at least the exploration of arbitration can be most influential. Otherwise we are hitting a wall in discussions Immediate clarification of her position with the PS is required. As in, immediately."]

[18/ 07/2018, 20:50:37] Alex Salmond: T: 0131-244 4026

E: perm.sec@gov.scot

Mr Callum Anderson Levy and McRae Pacific

House 70 Wellington Street GLASGOW

G26UA

Private and Confidential 18 July 2018

Dear Mr Anderson

Thank you for your recent letters, in which you have raised your concern about the fairness of the Scottish Government Procedure. I want, first of all, to assure your client that I am approaching these important issues with the greatest of care and with an open mind. It remains the view of the Scottish Government that our Procedure is fair and legally sound.

We have ensured from the outset that your client had every opportunity to provide a statement

of his recollection of the events described in the "causes for concern" set out in my letter of 7 March. We granted a number of extensions to the initial deadline for such a statement to be provided. Your client was also offered the opportunity to speak to the Investigating Officer

directly but he declined to do so.

Your client has chosen not to provide a substantive response to the complaints made by Ms A and Ms B (causes for concern A - I) although he has made clear his denial that any harassment took place. Your letter of 26 April included quotations "in short none of the allegations are admitted" and "I categorically deny that I have ever harassed any civil servant".

Although you continue to express concern about the overall fairness and legality of the Procedure your letter of 26 April did include a substantive response to causes for concern J -

K. That letter also identified 5 witnesses to be interviewed - limited to those causes for concern only.

Contact information for those witnesses was provided by you on 8 May.

Witnesses were interviewed by the Investigating Officer and their statements were finally agreed by all parties by 28 June after a number of postponements and delays.

You have proposed arbitration in relation to the Procedure and explained why you consider it to be appropriate. The Scottish Government has explained in previous letters and in exchanges between legal representatives why we do not agree.

However, for completeness and to ensure our position is understood we make the following points.

First, we consider that we have given your client a fair opportunity to address the complaints, and that the procedure which we have followed is a fair one.

- We do not consider that arbitration would be appropriate to the circumstances. This is an investigation of serious complaints made by civil servants involving a former Minister. Submitting the process to an external decision maker would not be appropriate.
- As the decision maker, I have to balance a range of interests, and to ensure a Procedure which is fair both to your client and to the complainers. Arbitration of the SG process would not involve the complainers.
- As decision maker I have a duty to bring the investigation to a conclusion as efficiently and timeously as possible. Arbitration would cause unavoidable further delay.
- However tightly a remit were drawn, it seems unlikely that it would be possible to separate the procedural points which you have raised from issues of substance or content in a way which would allow those procedural concerns to be addressed.

Your client has provided a substantive response to causes for concern J - K. However, it remains my view that his interests and those of the investigation as a whole would best be served by him providing a substantive response to each of the causes for concern - and it is a matter of regret that he has chosen not to do so.

Consequently I am offering your client, even at this latest age, a final opportunity to provide any further representations about the complaints made by Ms A and Ms B.

Given the time that has elapsed since first notifying your client of the investigation you must confirm if your client wishes to take up this opportunity no later than 11 am on 19 July. Any further representations must be received by 3 pm on Friday, 20 July if they are to form part of my consideration.

Should your client choose not to take up this final opportunity I shall proceed to consider the report on the basis of the information he has already provided and will write to you again to inform you of the outcome.

Yours sincerely

LESLIE EVANS

[18/ 07/2018, 20:52:21] Alex Salmond: As you see the time allowed is tomorrow morning at 11am

[20/07/2018, 22:37:18] Alex Salmond: A full rebuttal of all complaints went in by the deadline today. Let us see how it is judged.

ANNEX C

4 August 2020

Dear Convener

I refer to your letter of 7 July.

Please treat this covering reply and attached annexes as my response to the questions posed in your letter.

With regard to paragraph 5 of Annex B of your letter, noting that "the Committee and all participants must comply with the court order made by the Lord Justice Clerk, Lady Dorrian, on 10 March 2020", I have excluded from this letter any information that, as far as I am aware, might disclose the identity of any of the complainers in HMA v AEA Salmond.

However, I do not know if my submission would pose a risk in ways I am not aware of, or if other evidence submitted would risk jigsaw identification.

Therefore, prior to publication of all or part of this submission, I would like assurance on the steps the Committee has taken to ensure that nothing in it, either on its own or taken together with anyone else's evidence, would risk identification.

The Committee previously asked me to retain all information relevant to the Inquiry. I enclose at Annex B a transcript of WhatsApp messages between myself and Alex Salmond. This is the only information I hold relevant to the Committee's Inquiry.

I have no objection, as regards my own interests, to the publication of these messages in full.

However, I seek an assurance from the Committee that any issues relating to Alex Salmond's data rights or legal privilege will be properly considered before publication, including whether his consent is required.

Subject to the above, I will be happy to discuss any aspect of my response with the Committee in oral session.

I have structured my response in line with your paragraph headings. Please note that any and all involvement I had in my capacity as First Minister in the Complaints Policy Development, Complaints Handling Procedure and Judicial Review - and any relevant documentation in respect thereof - will be included in the Scottish Government's submissions to the Committee.

The information I provide in this response relates to my actions in a party/personal capacity. This includes my decision to advise the Permanent Secretary of information I acquired in my party/personal capacity, where I considered that the interests of the Scottish Government required it. I refer in this submission to the letter I wrote to the Permanent Secretary on 6 June 2018. A copy of this should be requested from the Scottish Government.

COMPLAINTS POLICY DEVELOPMENT

As a personal reflection and for context, the development of the Scottish Government's "Handling of harassment complaints involving current or former Ministers" (hereinafter referred

to as "the Procedure") took place against the backdrop of the #MeToo movement, which started in late 2017 in the wake of allegations extending back over several years about certain high profile individuals.

The concerns being expressed globally at that time were that too many organisations did not have procedures in place that allowed allegations of sexual harassment to be raised or properly investigated; that women's voices were often not heard or listened to; that organisations too often closed ranks in defence of men accused of inappropriate behaviour; and that it could be particularly difficult for 'historic' allegations to be raised.

The media had also reported concerns about the prevailing culture in Holyrood.

The Scottish Government was just one of many organisations across the globe confronted with these questions at that time, and considering its procedures and culture in light of them.

You will also recall that a Scottish Government minister resigned in early November 2017 over concerns about sexually inappropriate conduct.

As First Minister, I wanted to ensure that the Scottish Government had robust procedures in place to allow any concerns or complaints by those in its employment to be properly and fairly considered, without fear or favour and regardless of the seniority or political affiliation of any individuals who might be the subject of such concerns or complaints.

My role as First Minister in the development of the Procedure will be set out in the Scottish Government's submission to the Committee.

COMPLAINTS HANDLING PROCEDURE

Any involvement in my role as First Minister will be included in the Scottish Government submission on the handling of the complaints.

I provide further information in a personal/party capacity in Annex A.

JUDICIAL REVIEW

The detail of my involvement in decisions associated with the Judicial Review will be set out in the Scottish Government's submission to the Committee.

MINISTERIAL CODE

The Committee is aware that I have made a self-referral to the independent panel of advisers on the Ministerial Code.

However, I address the requests in this section in Annex A to this letter.

Annex B includes communications in the form of WhatsApp messages between me and Alex Salmond.

My letter to the Permanent Secretary dated 6 June 2018 should be requested from the Scottish Government.

PARTY POLITICAL MATTERS

I had no communication with the SNP relevant to the subject matter of the Committee's inquiry, other than approving the party's public comments after the matter became public in August 2018.

My husband was obviously aware of Mr Salmond's presence in our home on 2 April and 14 July 2018, but he was not present at the meetings and I did not share the detail with him.

As I outline in Annex A, when I agreed to meet with Alex Salmond on 2 April 2018, I believed that what he was about to tell me may require a public response from the SNP. Indeed, I suspected that he may be about to resign from the SNP.

In the event, it was clear to me at the 2 April meeting that his approach to handling the matter was not likely to result in it becoming public at that stage.

Accordingly, there was nothing for me to alert the SNP to, and it was not appropriate for me to disclose the fact or detail of the complaints and investigation under the Procedure.

In relation to ensuring that there is a clear distinction between my role as First Minister and my role in the SNP, I have regard to the terms of both the MSP and Ministerial Codes of Conduct.

My Special Advisers abide by the terms of the Special Advisers' Code of Conduct and the Civil Service Code.

In relation to the question about Scottish Government communication and records, this is covered by Scottish Government procedures on the recording and retention of information.

The SNP communicates with its post holders in the normal ways - including meetings, emails and phone calls.

The safeguard to ensure this is distinct from government communications are the relevant Codes that MSPs, Ministers and Special Advisers are bound by.

To be clear, members of the public often email my SNP or MSP accounts about government business and I forward these to my ministerial private office.

On any other occasions when I email my ministerial private office or special advisers from my personal email - eg with diary queries or information requests - these will be to a Scottish Government email account and retained in line with standard procedures.

And all government business, no matter the platform/medium it is conducted on/through, is subject to Freedom of Information legislation.

CULTURE

I had no general concerns at the time about Scottish Government culture from 2008-14, and certainly not about sexual harassment. However, government is a high pressure environment. Mr Salmond could be challenging to work for and, rightly, he demanded high standards. However, I was present on some occasions when tense situations had to be defused.

Certain matters that I have become aware of through the events of the last couple of years raise - retrospectively - some other concerns.

I have no general concerns about the culture of the Scottish Government now. However, I am not complacent about the potential for instances of inappropriate behavior within a large

organisation. That is why it is important to have clear and robust procedures in place which, subject to any views of this Committee on the Procedure, I believe to be the case.

I have no comment to make on the adequacy of the Civil Service Code. I give some personal reflection on the Ministerial Code in Annex A - however, the adequacy of it is a matter the independent panel will be able to consider.

CONCLUSION

In conclusion, I would like to add the following personal reflections.

The Committee will be considering the Scottish Government's handling of complaints raised under the Procedure. That is, of course, legitimate.

However, the Scottish Government would have had nothing to 'handle' had complaints not been raised about Alex Salmond's conduct.

It was the concerns raised about his conduct - an aspect of which, by his own admission, he apologised for - that gave rise to this matter.

In my view, when these complaints were raised, the Scottish Government had a duty to investigate them and the fact that a mistake was made in the conduct of the investigation does not change that fact. To have swept them under the carpet because of who they related to would have been wrong.

As far as my personal involvement is concerned, over the last couple of years, I have faced accusations of 'conspiring' against Alex Salmond and also of 'colluding' with him.

I reject in the strongest possible terms both of these suggestions.

Indeed it seems to me that what some want to present as 'conspiracy' is in actual fact my refusal to 'collude' or 'cover up'.

In what was a very difficult situation - personally, politically and professionally - I tried to do the right thing. Whether I always got it absolutely right is something I still reflect on, and the Committee will consider, but I sought all along to act in good faith and to strike the right balance of judgment given the difficult issues I was confronted with.

In the light of the #MeToo movement, I sought to ensure that the Scottish Government developed a process that allowed allegations of sexual harassment - including allegations of a historic nature - to be fully and fairly considered.

I did not do this *because* I had a concern (as set out in Annex A) that allegations about my predecessor could materialise. But nor did I, in any way, allow such concern to lead me to limit the scope of the procedure.

I agreed to meet a friend of 30 years when I was told he was in distress and wanted to talk to me about a serious matter.

And it is certainly the case that I was anxious to prepare my Party as far as possible for an issue that, at different stages, I thought could be about to become public.

However, I did not seek to prevent or influence the proper consideration of the complaints.

For the sake of the complainers, the Scottish Government and indeed Alex Salmond himself, I acted in a way that I judged would best protect the independence and confidentiality of the investigation.

However, when I became aware of a serious risk of legal action against my government, I felt I had a duty to make the Permanent Secretary aware of it.

My view throughout was that complaints must be properly and fairly considered, no matter who the subject of them might be, or how politically inconvenient the investigations may be.

And that remains my view, even though the circumstances and consequences of this particular investigation have caused me - and others, in many cases to an even greater extent - a great deal of personal anguish, and resulted in the breakdown of a relationship that had been very important to me, politically and personally, for most of my life.

Lastly, since August 2018 I have taken care to say nothing that could compromise other proceedings, including the Committee's inquiry - even though that has meant being unable to say more about my own actions or challenge misrepresentations about them.

Yours Sincerely

NICOLA STURGEON

From: [REDACTED]
Sent: 16 March 2021 13:56
To: James Hamilton [REDACTED]
Subject: FW: Private- draft report [UNSCANNED]

Hi James,

As discussed, please see attached legal views from the additional members of the secretariat [REDACTED]

We can discuss later if you would find that helpful- I have been giving some thought to approaches that might combine some of the things we discussed earlier.

Best wishes,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



From: [REDACTED]

Sent: 16 March 2021 13:33

To: [REDACTED]

Subject: RE: Private- draft report [UNSCANNED]

[REDACTED] some minor comments/typos in the attached – probably duplicating [REDACTED] substantially. There's some rogue double spaces but that's easily fixed with a find-replace.

I'll start putting together some advice for Ministers but if I [REDACTED] can help with any docs queries let us know.

Thanks

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 16 March 2021 12:44

To: [REDACTED]

Subject: RE: Private- draft report [UNSCANNED]

[REDACTED]

[REDACTED]

[REDACTED]

I've spotted a few typos (marked up) [REDACTED] for you and Mr Hamilton to consider.

Can you let me know what time you want the catch up later today? I have restricted availability late afternoon due to child care but may be able to arrange something if I know timings in advance.

Thanks

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 16 March 2021 11:18
To: [REDACTED]

Subject: RE: Private- draft report [UNSCANNED]

[REDACTED]

Many thanks for sight of these drafts.

[REDACTED]

[REDACTED]

From a readability point of view, I think the original draft references

[REDACTED]

Happy to discuss. This isn't easy.

Do please pass on my best wishes to Douglas Ross if you are in contact with him direct. We worked together on some SG litigation many years ago and he's such a nice chap.

Thanks.

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 16 March 2021 10:46

To: [REDACTED]

Subject: Private- draft report [UNSCANNED]

Hi everyone,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

Draft 10 March further revised by JH

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;
- ii. whether there has been any breach of the Code and the nature of any such breach; and
- iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.”

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, Chief of Staff to the First Minister, Mr Geoffrey Aberdeen, a former Special Adviser and Chief of Staff to the former First Minister, Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required. One person who had attended the first

meeting between the First Minister and the Deputy First Minister declined to make a statement, but since he had attended that meeting in the capacity of a legal adviser to Mr Salmond this is unsurprising. I had, in any event, no power to compel any person to cooperate with the investigation

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled “Handling of harassment complaints involving current or former ministers” (subsequently referred to in this report as the Procedure) which is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister.

1.4. [REDACTED] Mr Geoffrey Aberdeen, former Chief of Staff to Mr Salmond, met [REDACTED]. Mr Aberdeen says that [REDACTED] informed him that complaints had been made against Mr Salmond and named one of the complainants. [REDACTED] disputes this. Having discussed the matter with other contacts Mr Aberdeen decided to inform Mr Salmond of the allegations and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister and Mr Aberdeen, which took place in the First Minister’s office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister’s home. Mr Aberdeen and Ms Liz Lloyd, Chief of Staff to the First Minister, were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled "Handling of harassment complaints involving current or former ministers." It is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet" and will be referred to as "the Procedure" in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government's People Directorate, as well as the Scottish Government's Directorate for Legal Services. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations

involved are described in some detail in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints.¹

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey² continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised³, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.⁴

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.⁵

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no

¹ Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see

: SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot)

² <https://www2.gov.scot/Topics/Research/by-topic/public-services-and-gvt/Employee-Survey/PeopleSurvey-2016>

³ <https://www.gov.scot/publications/foi-17-02235/>

⁴ Response to Committee of the Scottish Government Handling of Harassment Complaints, paragraph 4.

⁵ Ibid., paragraph 5

mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers⁶ so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.⁷

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been

⁶ <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/8a6f-68e1-b8b4-41c7-a936-2a01-8aa7-57ea>

⁷ <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/e6e3-41bf-1320-4cf0-94de-6702-045d-7286>

provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter in which I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It is not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

2.8. I understand that so far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC is preparing a report.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding

her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I can find nothing in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal department, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice - and I offer no opinion on that question - she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers which of course included the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are still the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative.” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake

an impartial collection of facts, from, (sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future. (Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Mr Aberdeen's meetings with [REDACTED]

4.1. There were meetings [REDACTED] between [REDACTED] and Mr Geoffrey Aberdeen. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]

4.2. [REDACTED]

4.3. [REDACTED]

[REDACTED]

4.4. [REDACTED]

[REDACTED] In the light of the “me too” movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] wanted to ask Mr Aberdeen if there was anything of that nature, from his time as Chief of Staff, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.5. [REDACTED] had remarked the previous week that the content of an official briefing provided for First Minister’s Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of “No” to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than 5 cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister or into Alex Salmond.

4.6. [REDACTED] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.7. Whilst discussing “me too” in general, [REDACTED] described asking Mr Aberdeen whether he was aware of anything of concern. [REDACTED] [REDACTED] said Mr Aberdeen had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] said that Mr Aberdeen gave a general description of the incident which he presented as being in his view a minor incident, [REDACTED] [REDACTED] says Mr Aberdeen named the person concerned and that he did not seem to think it was a particularly significant incident. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.9. The conversation about “me too” also referred to a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [REDACTED] also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of [REDACTED] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [REDACTED] account Mr Aberdeen suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters [REDACTED] He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of [REDACTED]
[REDACTED]

[REDACTED]

4.13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.14. [REDACTED]

[REDACTED] This resulted from increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be in the future as it was clear there could be something to investigate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.15. [REDACTED], in order [REDACTED]

[REDACTED] indicated having a reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] says that Mr Aberdein took this to mean that someone within government had given [REDACTED] information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what [REDACTED] was saying.

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed

him that the Scottish Government had received official complaints about Mr Salmond. He says that the adviser denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdeen's account is more straightforward than the rather complicated account given by [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how Mr Aberdeen could have misunderstood what was said.

4.18. However, whether it is the case that [REDACTED]

[REDACTED] There is no evidence to suggest that the First Minister was aware of Mr Aberdeen's version of events. If Mr Aberdeen's account is correct I think it quite likely in any event that [REDACTED]

4.19. [REDACTED]

[REDACTED] would undoubtedly have been well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing

with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint [REDACTED]
[REDACTED]

4.20. Mr Aberdein states that it was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Furthermore, what Mr Aberdein later told Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what [REDACTED] [REDACTED] had told him. In view of this corroboration that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [REDACTED] about the existence of complaints and the identity of a complainer is credible.

4.21. In the absence of any evidence that [REDACTED] informed the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdein and [REDACTED] [REDACTED] do not in my opinion constitute any breach of the Ministerial Code by the First Minister. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] It remains the fact that the name which Mr Aberdein says was given to him by [REDACTED] was in fact the name of one of

the complainers against Mr Salmond. [REDACTED]

[REDACTED]

[REDACTED]

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a “lingering concern” about Mr Salmond. She described it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. I am not aware of any evidence which would disprove her account.

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdeen that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdeen cannot be precisely certain when and how this was arranged but believes he contacted [REDACTED] through a phone call.

6.2. Thereafter, he believes he may have met [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by Geoff Aberdeen, his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [REDACTED]
[REDACTED]
[REDACTED]

6.4. Mr Aberdeen said that [REDACTED] [REDACTED] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [REDACTED]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of either the First Minister or her Chief of Staff.

6.7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdeen, former Chief of Staff to Mr Salmond, which took

place in the First Minister's office in the Scottish Parliament. [REDACTED]
[REDACTED]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [REDACTED] said Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down

to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, that was [arranged] over the weekend. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdeen agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdeen's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by [REDACTED] and Mr Aberdeen [REDACTED], concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdeen was in parliament for a longer period, socialising with former colleagues. Mr Aberdeen says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdeen's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be that [REDACTED]
[REDACTED]
[REDACTED] It may simply have been [REDACTED]

[REDACTED]

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdeen on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdeen's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdeen was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that shortly before the meeting of 29 March [REDACTED] and she understood that [REDACTED] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [REDACTED] - Mr Aberdeen asked [REDACTED] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdeen was said to have indicated to [REDACTED] that Mr Salmond was in a state of distress and considering standing down from the SNP. The First Minister says that she had not been aware of these contacts in advance. [REDACTED]
[REDACTED]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdeen was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdeen agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdeen says that he relayed to the First Minister a broad summary of the complaints as described to him

by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having “relayed to me, in very high level, a summary of the complaints.” By “in high level” Mr Aberdeen meant “not in detail”- indeed he made it clear to me that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdeen on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdeen that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraphs 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [REDACTED] recalled a reference by Mr Aberdeen to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this

meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that it is difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware

of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting". The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings on the basis that she had no responsibility for operating the Government's harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdeen to the Scottish Parliament on 8 January 2019, although the First Minister's statement was technically a correct statement of the occasions on which she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdeen. Mr Duncan Hamilton, a barrister retained on behalf of Mr Salmond, was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. [REDACTED]

[REDACTED]

[REDACTED] The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdeen describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdeen on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew

if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved.

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that "If it comes to it I will intervene". Mr Aberdeen did not hear this statement made but he had absented himself from the room at one point and it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond “I want to assist”, which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, “I’m facing this terrible situation,” it is entirely possible that you say things like, “I’d love to help if I could”—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do? Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do.

In reply to a question from Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process.

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, ‘take control of the story’. This could have been along the lines of ‘I’m standing down from the SNP while I fight to clear my name’ or even a partial *mea culpa* ‘I’ve made mistakes, but I’m not guilty of what I am accused of’. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that

she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at

some point over weekend.” Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).

If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First

Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should

“reach whatever decision [she] thought appropriate” (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond’s belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond’s interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone’s satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She

reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July

2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme.

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt

others do not share this view. Mr Salmond made a forceful case to the effect that the First Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary,

therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. I understand a process of review is underway by Ms Laura Dunlop QC. This is a more appropriate forum in which to deal with these questions. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as fourteen months previously. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could

hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's

decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website and can

be accessed at <https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/>.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO “will have had no prior involvement with any aspect of the matter being raised.” Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel’s response at different stages- “a very real problem indeed” and “extremely concerning” on 31 October, the Petition “more likely than not to succeed” on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the “least worst” option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not tender it lightly. But we cannot let the respondents sail forth into January’s hearing without the now very real risks of doing so being crystal clear to all concerned.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate “was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there

is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case". In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were "very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn't think we had a stateable case..."

14.5. On 17 December Counsel's pessimism had deepened. The following extracts from a joint advice of Senior and Junior Counsel of that date they state:-

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a "scorched earth" one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those "in the crosshairs" – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no stateable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others

are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same

two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now

14.7. There followed what was described as a “watershed moment” on 21 December. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting. As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond’s proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of “the overarching duty on Ministers to comply with the law” stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say

rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Scottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private

secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to

“contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The alleged leak to the Daily Record

16.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

16.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence it is a matter for the police.

17. Conclusions

17.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government’s response to the petition of Mr Salmond (cite correct title of petition).

17.2. For the reasons set out in detail above in this Report I am of the opinion that The First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

James Hamilton

12 March 2021

4. Meetings with the former Chief of Staff in the week of 6 March 2018

4.1. There were meetings on 6 March and 9 March 2018 between Mr Geoffrey Aberdein and a friend of his who is also known to the First Minister. I will refer to this person as the friend. Mr Aberdein had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum.

4.2. The friend is sure about the dates of the meetings for reasons which seem to me convincing. Mr Aberdein is sure only that the meetings were in the week beginning 6 March but not of the exact dates.

4.3. Mr Aberdein and his friend agreed that the meeting on 6 March was an informal discussion between friends. Neither party kept any notes of the meeting.

4.4. It is agreed that the meeting was held at the request of Mr Aberdein's friend. The friend admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him.

4.5. The two had some discussion about the "me too" movement, and the friend described asking Mr Aberdein whether he was aware of anything of concern about Mr Salmond from his time working in government. The friend says Mr Aberdein referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.6. In relation to the incident that was sexual in nature the friend said that Mr Aberdein gave a general description of an incident which he presented as being in his view a minor incident, a drunken attempt at a kiss and nothing more. The friend says Mr Aberdein named the person concerned. However, subsequently the friend came to learn of this incident in much greater and far more serious detail, it being one of a number of allegations made against Mr Salmond.

4.7. The conversation about the "me too" movement also involved discussion of a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as "inappropriate behaviour" which was not specified in the Sky News report. Mr Salmond was reported as "strongly

denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. The friend also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of reporters had been trying to find out if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.8. According to the friend Mr Aberdein suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.9. Mr Aberdein in his account makes no mention of discussing any of these matters at the first meeting in the week of 6 March. He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Mr Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.10. Mr Aberdein, however, believes that the main purpose of the friend seeking to speak to him in early March was to establish a line of contact with Mr Salmond because relations between him and the First Minister had soured around that time. He says that as a friend and former colleague of both Ms Sturgeon and Mr Salmond he (Mr Aberdein) tentatively agreed to facilitate initial contact between both parties.

4.11. The friend does not accept that there was any such agreement at these meetings or indeed of having sought to facilitate contact between Mr Salmond and the First Minister. On the friend’s account the objective was to encourage Mr Aberdein to maintain contact with Mr Salmond in the hope that he might be a restraining influence on him.

4.12. Following the meeting the friend having reflected on their conversation asked Mr Aberdein for a second meeting. This resulted from the friend’s increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be in the future as it was clear there could be something to investigate. The friend wanted to share that concern with Mr Aberdein and to say to him that it was important if any issues should arise that he should make sure Mr Salmond had good political advice and to encourage Mr Aberdein to stay in touch with Mr Salmond.

4.13. The friend, in order to encourage Mr Aberdein to take the request seriously, claims to have indicated having a reason to believe there might be a complaint and it could be about Mr Salmond. The friend says that this was an overstatement intended to ensure that Mr Aberdein acted on the general concern expressed and that he made contact with Mr Salmond. The friend says that Mr Aberdein took this to mean that someone within government had given his friend information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. The friend then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what his friend was saying.

4.14. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that his friend informed him that the Scottish Government had received official complaints about Mr Salmond. He says that the friend denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. The friend denied knowing the name of the other complainer.

4.15. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by his friend. It is difficult to see how there can have been a misunderstanding as to what was actually said despite the friend's elaborate explanation of how Mr Aberdein could have misunderstood what was said.

4.16. However, whether it is the case that his friend did know something about the existence of complaints against Mr Salmond and told Mr Aberdein or whether information was passed in the other direction both the First Minister and Mr Aberdein's friend are very clear that the friend did not tell the First Minister about the meetings with Mr Aberdein at that time. The meetings were first mentioned to the First Minister much later, shortly before she met Mr Aberdein on 29 March, and the First Minister was not made aware of Mr Aberdein's account of what had transpired.

4.17. Mr Aberdein states that it was agreed at the second meeting that he would inform Mr Salmond of the meetings. The friend states merely that Mr Aberdein said that "he would contact Mr Salmond". I am left wondering what was there to contact Mr Salmond about if the friend's account is

correct. Furthermore, what Mr Aberdein later told Mr Salmond turned out in fact to be true.

4.18. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March (briefly and not in any detail because Mr Salmond was in a car travelling with others when telephoned) and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what the friend had told him. In view of the fact that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by his friend about the existence of complaints and the identity of a complainer is credible.

4.19. In the absence of any evidence that Mr Aberdein's friend informed the First Minister at the time about either the conversations with Mr Aberdein or the existence or the contents of the complaints, then the discussions between Mr Aberdein and his friend do not in my opinion constitute any breach of the Ministerial Code by the First Minister. I did not ascertain how the friend came to know the identity of a complainer at that time. The number of persons with this knowledge for official reasons was extremely small. Mr Aberdein's friend denies having had such knowledge or having passed it on. It remains the fact that the name which Mr Aberdein says was given to him by his friend was in fact the name of one of the complainers against Mr Salmond. A person who was aware of the actual incident which formed the basis of the complaint might, of course, have hazarded a guess based on that information.

Re: Scottish Ministerial Code

From: Geoff Aberdein [REDACTED]
To: [REDACTED] @gov.scot>
Date: Fri, 16 Oct 2020 12:49:22 +0000

Thank you [REDACTED]

Sent from my iPad

> On 16 Oct 2020, at 12:30, "[REDACTED] @gov.scot" <[REDACTED]@gov.scot> wrote:

>

> Dear Geoff,

>

> I can confirm your email has been received. Mr Hamilton is considering and will provide a substantive response shortly.

>

> Best wishes,

[REDACTED]

>

> -----Original Message-----

> From: Geoff Aberdein [REDACTED]

> Sent: 16 October 2020 11:50

> To: [REDACTED] @gov.scot>

> Subject: Re: Scottish Ministerial Code

>

> Hello,

>

> I'd appreciate it if you could confirm receipt of my email of 13 October please.

>

> Best wishes

>

> Geoff

>

> Sent from my iPad

>

>> On 13 Oct 2020, at 12:47, Geoff Aberdein [REDACTED] wrote:

>>

>> FAO James Hamilton

>>

>> Dear Mr Hamilton

>>

>> I have today received your letter of 8 September concerning the First Minister's self-referral under the Ministerial Code. [REDACTED]

[REDACTED] and, given the current restrictions on employees, it only came to my attention today.

>>

>> I am, of course, willing to assist your enquiries but I would welcome a call with you in the first instance to discuss the best way for me to do this.

>>

>> Perhaps you or your team can contact me using this email address to arrange this?

>>

>> If there is any requirement for you to send me hard copy information going forward please do so by sending it to the following address:

>>

[REDACTED]



>>
>> I look forward to hearing from you.
>>
>> Best wishes
>>
>> Geoff Aberdein
>>
>>
>> Sent from my iPad
>
>

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ODO - Scottish First Minister Breaches of Ministerial Code: Knowingly Misleading Parliament: Investigation of Deaths - [REDACTED]

From: [REDACTED] </o=tse/ou=exchange administrative group
(fydibohf23spdlt)/cn=recipients/cn=[REDACTED]bb">
To: [REDACTED]@btinternet.com
Date: Wed, 17 Feb 2021 12:56:55 +0000

Dear [REDACTED]

Thank you for your email of 10 February 2021. I am acting as the secretariat to James Hamilton, Independent Advisor, for his work on the ongoing Ministerial code investigation and am responding to your email in that capacity.

I can confirm that your email has been received, and that I have passed it to Mr Hamilton.

Best wishes,

[REDACTED] [REDACTED]

RE: Ministerial Code investigation- video interview- availability

From: First Minister <firstminister@gov.scot>
To: [REDACTED]@gov.scot>
Date: Wed, 16 Dec 2020 19:08:04 +0000

[REDACTED]

Just to confirm we have received your email and once we have had the opportunity to discuss with the First Minister I will be able to get back to you.

Kind regards

[REDACTED]

[REDACTED] | PS/First Minister | [REDACTED]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [REDACTED]@gov.scot>
Sent: 16 December 2020 12:37
To: First Minister <firstminister@gov.scot>
Subject: Ministerial Code investigation- video interview- availability

P/S First Minister,

As you know, James Hamilton is currently conducting an investigation into the First Minister's self-referral under the Ministerial Code. The First Minister has provided a written statement to Mr Hamilton.

As set out in his letter of September 2020, Mr Hamilton may wish to invite those who have provided written statements to him to participate in an interview to discuss the content of the written statement and to allow Mr Hamilton to ask any supplementary questions.

Mr Hamilton is finalising his consideration of written statements, and would like to ask whether the First Minister would be available to participate in a video interview in the week commencing 11th or 18th of January 2021?

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 17 March 2021 15:58
To: [REDACTED]
Subject: RE: [REDACTED] [UNSCANNED]

[REDACTED]

Happy to have a video call. I assume that you just send me a link.

D

From: [REDACTED]
Sent: 17 March 2021 15:37
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

12:30 sounds good. Do you want me to find some teleconference details we can use, or we could go for a video call? We have a Cisco Webex account for the review, I might as well get my money's worth!

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 17 March 2021 14:41
To: [REDACTED]
Subject: RE: [REDACTED] [UNSCANNED]

Dear [REDACTED]

I have just learned that my hearing tomorrow starts at 10.30, 12 might be cutting it fine. We could plan for 12.30. I will let you know in the event that the hearing looks like overrunning.

Douglas

From: [REDACTED]
Sent: 17 March 2021 10:20
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

Would we be able to put something in the diary for midday tomorrow? Mr Hamilton would like me to be on the call as well, so I can find a teleconference account for us to use, or we can use the webex account we have for the Ministerial Code referral if videoconference would be ok with you?

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 16 March 2021 16:01
To: [REDACTED]
Subject: RE: [REDACTED] [UNSCANNED]

Dear [REDACTED]

I have a hearing on Thursday beginning at 9.30 which is set down for an hour and a half, so I should be free from about 11.30 a.m.

Regards

Douglas

From: [REDACTED]
Sent: 16 March 2021 14:49
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

Many thanks for your advice. I have passed this to Mr Hamilton and he is considering. [REDACTED]

would you be free at all on Thursday for a phone call or video call?

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 16 March 2021 11:39
To: [REDACTED]
Subject: FW: [REDACTED] [UNSCANNED]

Dear [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: Douglas Ross

Sent: 15 March 2021 15:04

To: [REDACTED]

Subject: RE [REDACTED] [UNSCANNED]

Dear [REDACTED]

[REDACTED]

I have quite a lot on my plate over the next 24 hours [REDACTED]

[REDACTED]

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: [REDACTED]
Sent: 15 March 2021 13:24
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 15 March 2021 09:51
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

Many thanks for your email. I [REDACTED]

Mr Hamilton is very obliged for your prompt response, [REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 12 March 2021 19:07
To: [REDACTED]
Subject: RE: [REDACTED] [UNSCANNED]

Dear [REDACTED]

Further to your e-mail below, I have read the final draft report and offer the following observations:

[REDACTED]

[REDACTED]

As always, I would be happy to discuss any matters arising.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)
Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: [REDACTED]
Sent: 11 March 2021 09:35
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 09 March 2021 12:17

To: [REDACTED]
Subject: RE: [REDACTED]

[REDACTED]

Yes, I should be able to make time on either Thursday or Friday.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: [REDACTED]
Sent: 09 March 2021 10:53
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: [REDACTED]

Hi Douglas,

Hope you are well and that you had a good weekend.

[REDACTED]

On that basis, I wanted to check if you were available at all on Thursday or Friday [REDACTED]
[REDACTED]

Best wishes,



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From: [REDACTED]

Sent: 17 March 2021 18:10

To: James Hamilton [REDACTED]

Subject: Ch 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 17 March 2021 09:29
To: [REDACTED]@gov.scot>
Subject: RE: [REDACTED]

Hi Felicity,

Many thanks. [REDACTED]
[REDACTED]
[REDACTED]

Best wishes,
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 17 March 2021 08:45
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SG Organisational Continuity Team

I can be contacted by email until 1:30pm Monday to Friday, or by mobile ([REDACTED]) at other times.

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 16 March 2021 18:38

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: Document retention policy

Hi [REDACTED],

[REDACTED]

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 17 March 2021 12:08
To: [REDACTED]@gov.scot>; Rennick NS (Neil)
<Neil.Rennick@gov.scot>; Henderson G (Gavin) <Gavin.Henderson@gov.scot>
Cc: [REDACTED] Rogers D (David) (Constitution and Cabinet
Director) <David.Rogers@gov.scot>
Subject: OCT and Hamilton legal advice - note for the record

All

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 17 August 2020 13:18
To: James Hamilton <[REDACTED]>
Cc: [REDACTED]@gov.scot>
Subject: RE: Referral

Dear James

As promised, I am now working on the letters you have requested.

Here is a draft of the letter to Ms Sturgeon. I thought it worth sending this now just to test whether this is what you are looking for.

You will see that I am asking for clarification from you regarding one date, 7 June 2018.

I will press on with the other drafts.

I am also pleased to let you know that I now have someone in place to fulfil the secretariat function for you. [REDACTED]

[REDACTED] will now be reading into the subject and will be able to pick up the support function very soon.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: James Hamilton
Sent: 14 August 2020 14:14
To: Hynd JS (James)
Subject: Referral

Dear James

I refer to our telephone conversation on Tuesday. I confirm that I would like you to prepare letters to go to the key potential witnesses inviting written information and observations on

the issues the subject matter of the review. As we discussed I suggest I might invite a response within four weeks and request the recipients of the letters to indicate whether they can comply with this request.

The letters should invite a general response. In addition recipients should be asked to deal in particular with specific issues as follows:

First Minister: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdein and the First Minister, [REDACTED]

[REDACTED]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

The First Minister should be asked to provide any notes, memoranda, minutes or other records of these meetings or contained in any communications concerning or describing any of these contacts including communications to civil servants or special advisers.

When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

The First Minister should be asked to provide any notes, memoranda, etc., concerning or containing any such advice.

The First Minister's Chief of Staff. (Is this Liz Lloyd?)

This person apparently attended the first meeting. She needs to be asked for details of the meeting as above. She also needs to be asked whether she was aware of any other contacts

[REDACTED] She should be asked for notes, memoranda, etc. as above.

Permanent Secretary (Ms. Leslie Evans)

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

The former First Minister

He should be asked similar questions to those for the First Minister concerning the details of the contacts. What was his purpose in contacting the First Minister? What was her response?

[REDACTED]

He should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

Mr Aberdein

[REDACTED]

If you can do drafts incorporating these questions I will approve them. Please also let me know if there is anything further you think should be asked at this stage. Each letter should indicate that I may wish to revert with further questions, and also that each recipient is invited to inform me of any other matters they consider might be relevant. Finally, please feel free to make any general or particular comments or observations you think might be appropriate. As you are aware I am concerned about the possibility of some matters being hidden under the cloak of legal professional privilege but on reflection I think it better to leave this unless and until it arises.

Best wishes

James

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Nicola Sturgeon MSP
First Minister
St Andrew's House
Edinburgh
EH1 3DG

[] August 2020

Dear First Minister

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider your self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with Mr Salmond; the extent to which you considered the application of the requirements of the Ministerial Code in relation to those meetings; whether you are satisfied that have complied with the requirements of the Code at all times; whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you had with Mr Salmond between 16 January 2018, when the first complaint against him was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when your second telephone conversation took place, which, according to your

statement to the Scottish Parliament on 8 January 2019, was the last contact you had with Mr Salmond. Can you also please confirm whether there was any contact, direct or indirect, thereafter.

2. Apart from the five contacts (three meetings and two telephone conversations) already disclosed in your statement to Parliament on 8 January 2019, were there any indirect contacts?
 - 2.1. In particular, was there a meeting or meetings prior to [REDACTED] between you and Geoff Aberdein, or any person acting on your behalf or asked to report or make representations on your behalf?
 - 2.2. If so, who attended any such meeting or meetings and what was discussed?
 - 2.3. When did you become aware of any such meetings?

[REDACTED]

4. In the case of each meeting or contact disclosed in your statement of 8 January 2019, I should be grateful if you would confirm:
 - 4.1. Who initiated each meeting or contact?
 - 4.2. Who attended, participated, witnessed or was informed about each meeting or contact?
 - 4.3. What was the purpose of each meeting or contact?
 - 4.4. What was your purpose in participating in each meeting or contact?
 - 4.5. What was discussed and who said what on each occasion?
5. You have stated that at the first meeting on 2 April 2018 you explained that you had no role in relation to the investigation or determination of the complaints under the Scottish Government Procedure. In the light of this explanation, can you please advise me why you did not thereafter simply decline to discuss the matter further with the Mr Salmond Minister? What did you see as the purpose of allowing these contacts to continue after the first occasion?
6. When did you inform the Permanent Secretary of these contacts? If you did not do so immediately after the first contact, why did you not do so then?
7. Did you ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice? Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration.

Once I have the material requested above, I expect that it will be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [4 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

Subject: Re: Mr James Hamilton

Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to “no comment” but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined

Yours sincerely

The Rt Hon Alex Salmond

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On 6 Oct 2020, at 22:28, Alex Salmond wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after

concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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Draft correspondence- additional written submissions

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]>
Date: Tue, 17 Nov 2020 18:45:30 +0000
Attachments: Mr Murrell letter.docx (22.18 kB); Mr Hamilton letter.docx (22.22 kB)

Hi James,

As discussed last week, please see attached draft letters to Mr Murrell, and to Douglas Hamilton (who was present at the 2 April meeting).

Happy to discuss.

Best wishes,

[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]@gov.scot

Peter Murrell
Chief Executive
SNP

[] November 2020

Dear Mr Murrell,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you information to assist me in preparing my report.

In your written submission to the Committee on the Scottish Government Handling of Harassment Complaints, you stated that you were aware of the meeting taking place on 2 April 2018 between the First Minister and Mr. Salmond, but that you were not present and did not participate in the meeting.

I would be grateful if you could confirm the information set out in your response to the Committee, and if there is any additional information you would like to provide that is relevant to my remit.

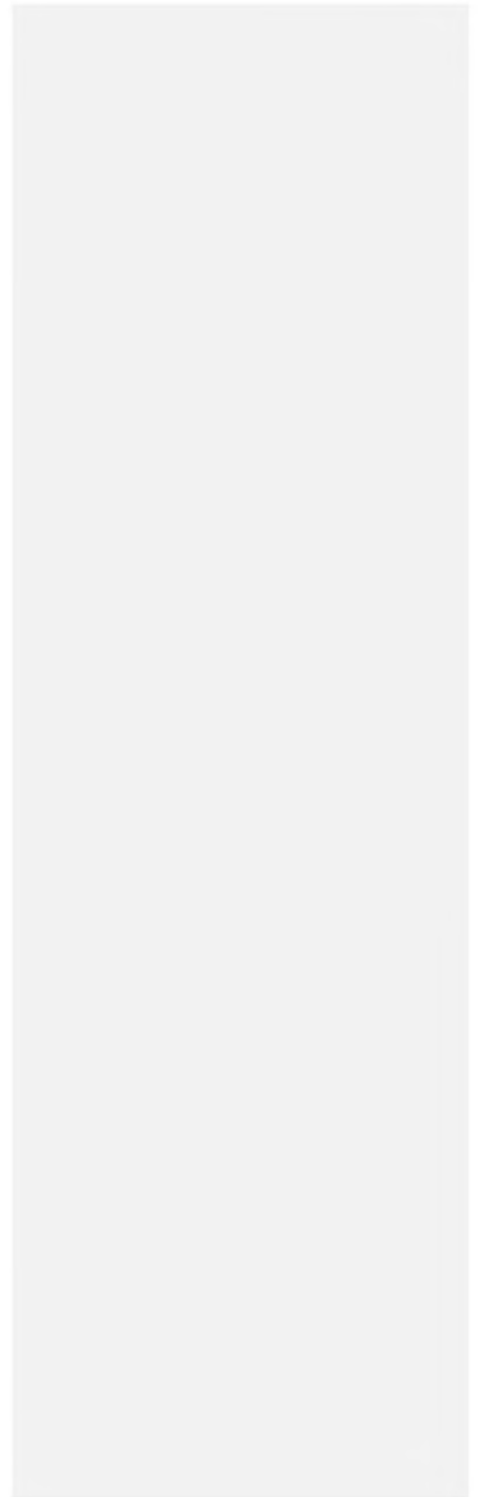
Once I have the material requested above, I expect that it may be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [4 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

Commented [WR(1)]: Not sure if we would want to include this.

James Hamilton



James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]@gov.scot

Douglas Hamilton

[] November 2020

Dear Douglas Hamilton,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you information to assist me in preparing my report.

Written submissions provided by other participants have indicated that you were present at and participated in a meeting between the First Minister and Alex Salmond, which was held at the First Ministers house on 2 April 2018.

I would be grateful if you could provide a short written statement on this meeting including; what you understood the purpose of the meeting to be; any information you have on how and when the meeting was arranged; who participated and on what basis; and any further information you have that would be relevant to my remit.

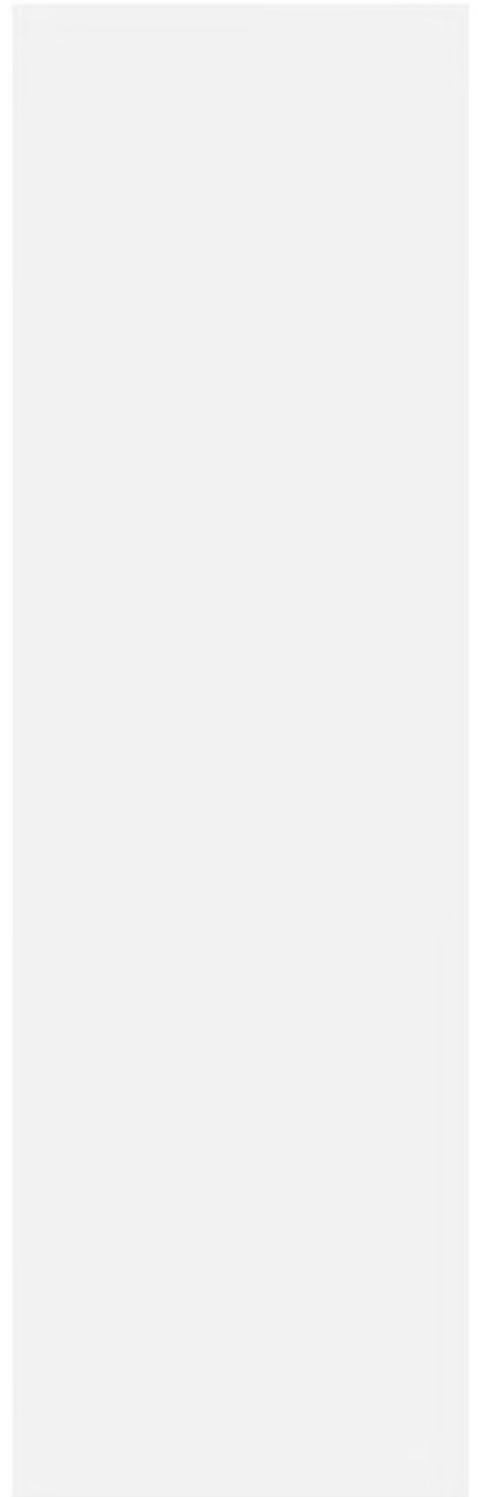
It would be helpful to have your response to this letter by [4 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

Commented [WR(1)]: I will check what the appropriate title is.

Commented [WR(2)]: Haven't included the line on meetings as I thought it was less likely this would be relevant.

James Hamilton



Draft of correspondence with Mr Salmond

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Thu, 17 Dec 2020 11:27:37 +0000
Attachments: Mr Salmond- follow up letter 17 December.docx (13.93 kB)

Hi James,

Quick update- I haven't had any further correspondence from Mr Salmond. I have made a start on drafting a short follow up response which could be sent early next week- it needs more work but I wanted to send something now for comment.

I have enquired as to the availability of the FM and Perm Sec for an interview in January, and am waiting for substantive responses on their availability.

Would it be helpful to have a catch up this afternoon?

Best wishes,

[REDACTED]

Dear Mr Salmond,

Further to my correspondence of 7th December, I wanted to enquire if you would be able to provide a written statement to help me with my investigation. I would find it very helpful to have a written submission, with as much information as you feel able to provide, setting out your responses to the questions included in previous correspondence.

I intend to complete my consideration of written submissions within the next couple of weeks, and in order for your statement to form part of those considerations I would need to receive it by the start of next week.

Yours sincerely,

James Hamilton

RE: Ministerial Code investigation- video interview- availability

From: First Minister <firstminister@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Mon, 18 Jan 2021 19:02:29 +0000

Thanks [REDACTED], we will hold the afternoon of the 1st February.

Kind regards

[REDACTED]

[REDACTED] | PS/First Minister [REDACTED]

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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 18 January 2021 18:11
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Many thanks. I think Mr Hamilton now has other commitments on the 29th so can we hold a slot on the afternoon of the 1st?

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** First Minister
Sent: 18 January 2021 16:14
To: [REDACTED] <[REDACTED]@gov.scot>; First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Could we pencil in for 29 January and/or 01 February.

I can keep both dates available for Mr Hamilton to try and make it work?

Let me know what times would best suit.

Kind regards

[REDACTED]

[REDACTED] | PS/First Minister [REDACTED]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [REDACTED] [REDACTED]@gov.scot>
Sent: 12 January 2021 17:56
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Mr Hamilton can do the 25th and the 29th, and possible the 26th (would be able to confirm next week).

Any time in the week of the 1st would be ok.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 12 January 2021 17:11
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Many thanks, I will ask Mr Hamilton for his availability in those two weeks and get back to you as soon as possible.

Best wishes,

[REDACTED]

From: [REDACTED] [REDACTED]@gov.scot> On Behalf Of First Minister
Sent: 11 January 2021 11:20
To: [REDACTED] [REDACTED]@gov.scot>; First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

[REDACTED]

Apologies for the delay in getting back to you and no worries for cancelling the meeting – I know how busy everyone is just now.

The week commencing the 25th January is when we are expecting the First Minister to be at committee. What dates and times would suit Mr Hamilton for that week? Would you be able to identify some dates for WC 25 January and also WC 01 February so we can give both Mr Hamilton and the First Minister a bit of flexibility?

As always happy to discuss further.

Kind regards

[REDACTED]

[REDACTED] | PS/First Minister | [REDACTED]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 06 January 2021 17:00
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

With apologies for any trouble caused, could we cancel the meeting arranged for next week?

Mr Hamilton is considering some additional written statements and documents and would like to defer any meeting with the First Minister until he has finished this work, so he can be sure of which issues he might want to discuss.

Mr Hamilton has indicated he may have some questions he would like to discuss with the FM- would it be possible to have a provisional slot in the diary in the week of the 25th in case this is required?

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 30 December 2020 16:45
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Many thanks for suggesting these dates and understand that the date may need to change depending on any emergency business that might arise. Mr Hamilton would prefer the 13th if that would be possible?

I need to do a couple of things to finalise arrangements for the video interviews, but once I have done that I will send over some joining instructions. It would also be helpful to arrange a technical test with someone from the private office a couple of days before the meeting just to check everything works.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** First Minister
Sent: 22 December 2020 19:29
To: [REDACTED] <[REDACTED]@gov.scot>; First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

[REDACTED]

Apologies for the delay in getting back to you.

Can we suggest two dates please – Wednesday the 13th and Wednesday the 20th, both around 1500hrs . I do want to add a caveat (as I have to do with any meetings I currently arrange) that the First Minister may have to react to urgent business and I therefore may ask to reschedule. This would only be in an emergency situation and I will make all attempts to ensure the meeting takes place.

Grateful if you could send me the details of the video interview so I can arrange set up.

Please do not hesitate to contact me if you have any problems or queries.

Best wishes

[REDACTED]
[REDACTED]
Private Secretary to the First Minister
5th Floor | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [REDACTED]
[REDACTED]



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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 16 December 2020 12:37
To: First Minister <firstminister@gov.scot>
Subject: Ministerial Code investigation- video interview- availability

P/S First Minister,

As you know, James Hamilton is currently conducting an investigation into the First Minister's self-referral under the Ministerial Code. The First Minister has provided a written statement to Mr Hamilton.

As set out in his letter of September 2020, Mr Hamilton may wish to invite those who have provided written statements to him to participate in an interview to discuss the content of the written statement and to allow Mr Hamilton to ask any supplementary questions.

Mr Hamilton is finalising his consideration of written statements, and would like to ask whether the First Minister would be available to participate in a video interview in the week commencing 11th or 18th of January 2021?

Best wishes,

■■■■ ■■■■

Re: FW: Ministerial Code investigation- video interview- availability

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Mon, 18 Jan 2021 16:38:43 +0000

Hi [REDACTED]

Afternoon is probably best. The VC may overflow into 1 Feb but if so they will try to have a morning meeting. If necessary I can skip VC as there are two other rapporteurs.

James

On Mon 18 Jan 2021 at 16:35 James Hamilton <[REDACTED]@[REDACTED]> wrote:

On Mon 18 Jan 2021 at 16:29 <[REDACTED]@gov.scot> wrote:

Hi James,

Apologies for the barrage of emails. Would 1 Feb be ok for a discussion with the First Minister, and if so what time would be best?

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot> **On Behalf Of** First Minister
Sent: 18 January 2021 16:14
To: [REDACTED]@gov.scot>; First Minister
<firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Could we pencil in for 29 January and/or 01 February.

I can keep both dates available for Mr Hamilton to try and make it work?

Let me know what times would best suit.

Kind regards

[REDACTED]

[REDACTED] | PS/First Minister | [REDACTED]

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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 12 January 2021 17:56
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Mr Hamilton can do the 25th and the 29th, and possible the 26th (would be able to confirm next week).

Any time in the week of the 1st would be ok.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 12 January 2021 17:11
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Many thanks, I will ask Mr Hamilton for his availability in those two weeks and get back to you as soon as possible.

Best wishes,

[REDACTED]

From [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** First Minister
Sent: 11 January 2021 11:20
To: [REDACTED] <[REDACTED]@gov.scot>; First Minister
<firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

[REDACTED]

Apologies for the delay in getting back to you and no worries for cancelling the meeting – I know how busy everyone is just now.

The week commencing the 25th January is when we are expecting the First Minister to be at committee. What dates and times would suit Mr Hamilton for that week? Would you be able to identify some dates for WC 25 January and also WC 01 February so we can give both Mr Hamilton and the First Minister a bit of flexibility?

As always happy to discuss further.

Kind regards

[REDACTED]

[REDACTED] | PS/First Minister | [REDACTED]

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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 06 January 2021 17:00
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

With apologies for any trouble caused, could we cancel the meeting arranged for next week?

Mr Hamilton is considering some additional written statements and documents and would like to defer any meeting with the First Minister until he has finished this work, so he can be sure of which issues he might want to discuss.

Mr Hamilton has indicated he may have some questions he would like to discuss with the FM- would it be possible to have a provisional slot in the diary in the week of the 25th in case this is required?

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 30 December 2020 16:45
To: First Minister <firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Many thanks for suggesting these dates and understand that the date may need to change depending on any emergency business that might arise. Mr Hamilton would prefer the 13th if that would be possible?

I need to do a couple of things to finalise arrangements for the video interviews, but once I have done that I will send over some joining instructions. It would also be helpful to arrange a technical test with someone from the private office a couple of days before the meeting just to check everything works.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** First Minister
Sent: 22 December 2020 19:29
To: [REDACTED] <[REDACTED]@gov.scot>; First Minister
<firstminister@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

[REDACTED]

Apologies for the delay in getting back to you.

Can we suggest two dates please – Wednesday the 13th and Wednesday the 20th, both around 1500hrs . I do want to add a caveat (as I have to do with any meetings I currently arrange) that the First Minister may have to react to urgent business and I therefore may ask to reschedule. This would only be in an emergency situation and I will make all attempts to ensure the meeting takes place.

Grateful if you could send me the details of the video interview so I can arrange set up.

Please do not hesitate to contact me if you have any problems or queries.

Best wishes

[REDACTED]

[REDACTED] [REDACTED]

Private Secretary to the First Minister

5th Floor | St Andrew's House | Regent Road | Edinburgh | EH1 3DG [REDACTED]
[REDACTED]



Office of the First Minister of Scotland

FirstMinister.gov.scot

Prìomh Mhinistear na h-Alba

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From [REDACTED] <[REDACTED]@gov.scot>

Sent: 16 December 2020 12:37

To: First Minister <firstminister@gov.scot>

Subject: Ministerial Code investigation- video interview- availability

P/S First Minister,

As you know, James Hamilton is currently conducting an investigation into the First Minister's self-referral under the Ministerial Code. The First Minister has provided a written statement to Mr Hamilton.

As set out in his letter of September 2020, Mr Hamilton may wish to invite those who have provided written statements to him to participate in an interview to discuss the content of the written statement and to allow Mr Hamilton to ask any supplementary questions.

Mr Hamilton is finalising his consideration of written statements, and would like to ask whether the First Minister would be available to participate in a video interview in the week commencing 11th or 18th of January 2021?

Best wishes,

■■■■ ■■■■

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Re: Ministerial code investigation

From: [REDACTED]@bbc.co.uk>
To: [REDACTED]@gov.scot>
Date: Thu, 18 Feb 2021 11:15:25 +0000

Ok. Please keep me posted.

[REDACTED]
Political Editor
BBC Scotland News
[REDACTED]

> On 18 Feb 2021, at 11:11, [REDACTED]@gov.scot wrote:
>
> Hi [REDACTED]
>
> In response to your questions, Mr. Hamilton intends to complete his report as soon as possible, and is conscious that the Scottish Parliament election is scheduled to take place in early May 2021.
>
> Mr Hamilton does not intend to offer comment on the process of his investigation, or the content of his report, pending the issuing of his report.
>
> On that basis, I don't think I can offer any more details on the process (or what stage of the process Mr Hamilton has reached) at this point in time.
>
> Best wishes,
>
> [REDACTED]
>
> -----Original Message-----
> From: [REDACTED]@bbc.co.uk>
> Sent: 17 February 2021 15:31
> To: [REDACTED]@gov.scot>
> Subject: RE: Ministerial code investigation
>
> Hello again [REDACTED]
>
> I just wanted to ask if there is any update on the timing of Mr Hamilton's report.
>
> Also, are you able to confirm that he has completed the evidence gathering element of his work ie that he is now in the report writing phase?
>
> Many thanks
>
> [REDACTED]
>
> -----Original Message-----
> From: [REDACTED]@gov.scot [mailto:[REDACTED]@gov.scot]
> Sent: 14 January 2021 11:00
> To: [REDACTED]
> Subject: RE: Ministerial code investigation
>
> Dear [REDACTED]
>

> Thank you for your email. Mr Hamilton does not propose to make any public comment pending the issuing of his report.

>

> It may, however, be helpful for me to explain some of the background (as far as I understand it) to the reporting in the Sun. At FMQs yesterday, the First Minister referenced correspondence from Mr Hamilton to the Deputy First Minister. I understand that Scottish Government communications team then issued a copy of the letter from Mr Hamilton to the Deputy First Minister to various journalists who had been present at the post FMQ press briefing, including the Press Association.

>

> Separately, Mr Hamilton yesterday responded to correspondence received from Alex Cole-Hamilton and other MSPs concerning the remit of the investigation; I understand that extracts of this letter have been published on social media by Alex Cole-Hamilton.

>

> I hope this information is helpful. If you would like to discuss, please give me a call on the number below.

>

> Best wishes,

>

> [REDACTED]

>

> [REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code |
Please contact me on Skype or on [REDACTED]

>

>

>

>

> -----Original Message-----

> From: [REDACTED]@bbc.co.uk>

> Sent: 14 January 2021 09:46

> To: [REDACTED]; [REDACTED]@gov.scot>

> Subject: Ministerial code investigation

>

>

> Hi [REDACTED]

>

> I am just following up the report in today's Sun suggesting the scope of Mr Hamilton's investigation will be widened to consider the various claims made in Mr Salmond's submission. Can you clarify?

>

> Many thanks.

>

>

> [REDACTED]

> Political Editor

> BBC Scotland News

> [REDACTED]

>

>

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Letter for Mr Salmond

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]>
Date: Thu, 18 Feb 2021 11:00:24 +0000
Attachments: Salmond letter feb 18 2021.docx (13.62 kB)

Hi James,

Please see attached draft letter for Mr Salmond.

Best wishes,

[REDACTED]

Dear Mr Salmond,

Thank you for your offer, made in your email of 11 February, to provide additional written material and participate in a video interview if required.

I am reaching the end of my investigation and would therefore need to consider any further material as soon as possible. I would be grateful if you could provide the additional material this week, and confirm if you would want to participate in an interview.

Yours sincerely,

James Hamilton

Re: FW: Ministerial code investigation

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Thu, 18 Feb 2021 10:55:10 +0000

Agreed.
J

On Thu, 14 Jan 2021 at 10:13, <[REDACTED]@gov.scot> wrote:

Hi James,

Further communications from the BBC. I think this might best be answered with the general no comment line, and some factual background information, referencing that SG had issued your letter to the media, and that your letter to MSPs has been reported on social media.

If you are content with that, I can reply to the journalist along those lines.

Best wishes,

[REDACTED]

-----Original Message-----

From: [REDACTED]@bbc.co.uk>

Sent: 14 January 2021 09:46

To: [REDACTED]@gov.scot>

Subject: Ministerial code investigation

Hi [REDACTED]

I am just following up the report in today's Sun suggesting the scope of Mr Hamilton's investigation will be widened to consider the various claims made in Mr Salmond's submission. Can you clarify?

Many thanks.

[REDACTED]

Political Editor
BBC Scotland News

[REDACTED]

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From: [REDACTED]
Sent: 18 March 2021 16:31
To: James Hamilton [REDACTED]
Subject: Draft cover letter and note

Hi James,

Please see attached first draft of a cover letter and note as discussed earlier. I've suggested some alternative formulations which might avoid redaction of the note.

In terms of the timings, I have found out (confidentially) that the Committee report is likely to come out on Tuesday. That would mean Monday might be a good day to send the report if you still intend to beat the Committee and we can get things organised for then- that would mean having the final draft ready on Saturday to allow proofreading and sign off on Sunday.

Best wishes,

[REDACTED]
ccj

Dear Mr Swinney,

MINISTERIAL CODE REFERRAL- REPORT

In accordance with my role as adviser on the Ministerial Code, I have investigated the matters set out in the remit for the investigation into the First Minister's self-referral under the Ministerial Code.

I enclose my final report, which addresses the questions set out in the remit, including whether the Ministerial Code is engaged regarding the meetings and discussions included in the remit; and whether there has been any breach of the Code and the nature of any such breach.

In the course of my investigation, participants have provided statements which raised additional issues that I considered relevant to the remit. Accordingly, the report covers these matters and considers whether there has been any breach of the Code and the nature of any such breach.

I understand that, in order to comply with the court orders, it will be necessary to make extensive redactions to the enclosed report before publication. I have enclosed a short note setting out my views on this matter. I request that, in order to make my position on the report clear, this is published alongside the report.

The remit also invited me to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure. I have also identified other areas where I think updates to the Ministerial Code are necessary, specifically in relation to the conduct of Special Advisors. I consider that this aspect of the remit would be best delivered alongside the consideration of any updated Procedure, and by both Ministerial Code advisers. Accordingly, I would propose to work with the other Ministerial Code adviser to prepare recommendations on this topic.

I note that the report is to be published on the day it is received.

Some considerations

I have enclosed a copy of my report, which is drafted in such a way to fulfil the remit I was set in the way I consider necessary to give a full account of events and my deliberations.

[REDACTED]

[REDACTED]

I am deeply frustrated that the court orders which apply to this area will have the effect of preventing publication of a report fulfilling the remit in the way I see appropriate.

A key part of the report necessarily refers

[REDACTED]

The discussions set in train a series of events which ultimately led to the meeting between the First Minister and Mr Aberdeen on 29 March and the subsequent contacts between the First Minister and Mr Salmond.

[REDACTED]

On that basis, I consider that a redacted report

[REDACTED]

[REDACTED]

On that basis, I accept that the redacted report will be published in order to bring this process to a close. I request that any publication should include this annex as a supporting document, and the redactions done in such a way as to show how much text has been removed, so that those reading the report may understand the extent to which the information they are provided with has been limited by legal constraints.

From: [REDACTED]
Sent: 18 October 2020 13:25
To: James Hamilton [REDACTED]
Subject: FW: Mr James Hamilton

Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond
Sent: 17 October 2020 12:34
To: [REDACTED]
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

Appendix 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On 6 Oct 2020, at 22:28, Alex Salmond [REDACTED] > wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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Re: Media Enquiry- Daily Mail

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Fri, 18 Dec 2020 16:16:29 +0000

Thanks, [REDACTED] your draft to the journalist is better. Please issue the letter.

James

On Fri 18 Dec 2020 at 13:59 <[REDACTED]@gov.scot> wrote:

Hi James,

Many thanks, I will put the letter onto the template. Would you like to issue it today?

On the response to the Daily Mail, I think it might be more straightforward to say the remit is a matter of Parliamentary record- as I'm not sure it was debated in Parliament but presented to them as a PQ answer.

I've reworked slightly as follows on that basis, if that's ok?

The remit for my investigation is a matter of Parliamentary record. I do not propose to make any public comment pending the issuing of my report.

This has made me think that it might be helpful to get some independent Communications support for the investigation- as it seems likely that the number and complexity of media enquiries is only likely to increase over the coming months. We could discuss further on Monday.

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 18 December 2020 13:16
To: [REDACTED]@gov.scot>
Subject: Re: Media Enquiry- Daily Mail

Hi [REDACTED]

I attach revised draft letter to Mr Salmond.

Regarding the journalist's queries I would reply that (a) my remit has been the subject of discussion in the Scottish parliament (b) I am working on my report on the basis of my remit and (c) I do not propose to make any public statement pending the issuing of my report.

If you see any problem with this we can talk on the phone. I am at home at present.

Best wishes

James

On Fri, 18 Dec 2020 at 11:47, <[REDACTED]@gov.scot> wrote:

Hi James,

A journalist from the Daily Mail has been in touch with Scottish Government communications teams, and have asked how they would be able to get in touch with you with any queries. I suggested that the questions be sent to me and I could pass them to you to consider if, and/or how, you might answer them.

The journalist is [REDACTED] at the Daily Mail, and his queries are as follows.

I wanted to ask Mr Hamilton:

Is he investigating whether the FM misled parliament?

If not, why not?

Does he intend to do so?

If not, why not?

If he did decide to do so, would he let Mr Swinney know and has he done so, and if so when and if not why not?

Can Mr Hamilton share with us any correspondence he has had with the SG on the subject of what he is currently investigating and whether he is or intends to look at whether the FM misled parliament? If not why not?

I think that the answer to these questions might be the same as used in previous correspondence with Mr Aberdein and Mr Salmond- basically that it would be premature to say what might be relevant in the course of your investigation. Happy to discuss.

Best wishes,



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Re: Media Enquiry- Daily Mail

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Fri, 18 Dec 2020 13:15:34 +0000
Attachments: Mr Salmond- follow up letter 18 December.docx (8.54 kB)

Hi [REDACTED]

I attach revised draft letter to Mr Salmond.

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If you see any problem with this we can talk on the phone. I am at home at present.

Best wishes

James

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Can Mr Hamilton share with us any correspondence he has had with the SG on the subject of what he is currently investigating and whether he is or intends to look at whether the FM misled parliament? If not why not?

I think that the answer to these questions might be the same as used in previous correspondence with Mr Aberdeen and Mr Salmond- basically that it would be premature to say what might be relevant in the course of your investigation. Happy to discuss.

Best wishes,

[REDACTED]

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Dear Mr Salmond,

Further to my letter of 7 December 2020, I repeat my enquiry whether you are prepared to provide a written statement to help me with my investigation. It would be very helpful to have a written statement from you, with as much information as you feel able to provide, setting out your responses to the questions included in previous correspondence.

As you are aware the Ministerial Code provides that the First Minister may refer matters to the independent advisers to provide her with advice on which to base her judgment about any action required in respect of Ministerial conduct. The First Minister has made such a referral to me on foot of which I have sought written statements from all the persons whom I have identified as likely to have evidence relevant to that remit. I have now received written statements from every person whom I have so identified except you.

As you are also aware I have no power to compel any person to cooperate with me. That being so I must formulate my advice on the evidence and information which is available to me. I also consider that the First Minister is entitled to expect that I will do so in a reasonably expeditious manner.

I therefore now intend to complete my consideration of written statements as soon as possible. In order for any statement from you to form part of that consideration I will need to receive it without delay. If you do intend to make a statement I would appreciate it if you could let me know when I might expect to receive it, otherwise I shall assume that you have decided not to become involved in this process.

Yours sincerely,

James Hamilton

From: James Hamilton [REDACTED]
Sent: 19 January 2021 13:13
To: [REDACTED]@gov.scot>
Subject: Re: Correspondence- for comment

Thanks! Elegant variation is very important!

On Tue, 19 Jan 2021 at 10:39, <[REDACTED]@gov.scot> wrote:
Hi James,

Thanks, I adjusted some of the wording slightly to avoid using the word "correct" twice in one sentence, and have issued the letter.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 18 January 2021 15:14
To: [REDACTED]@gov.scot>
Subject: Re: Correspondence- for comment

Hi [REDACTED]

I think that looks fine.

Best wishes

James

On Mon, 18 Jan 2021 at 14:00, <[REDACTED]@gov.scot> wrote:
I've adjusted the letter slightly- on the referencing what Mr Aberdein said, I've adjusted to make reference to him submitting a written statement to you, to avoid any confusion about who has/hasn't seen what went to the Committee.

I've also made some minor editing changes, let me know if these are ok.

From: James Hamilton [REDACTED]
Sent: 18 January 2021 13:13
To: [REDACTED]@gov.scot>
Subject: Re: Correspondence- for comment

Thanks [REDACTED]. I think we should refer to what Mr Aberdein said to me. It needs to be stated very accurately. Can you suggest a draft?
James

On Mon, 18 Jan 2021 at 13:05, [REDACTED]@gov.scot> wrote:
Hi James,

Many thanks. The only difficulty I can see, and I should have included in my email, is that I don't think Geoff Aberdein's submission to the committee has yet been published. On that basis, I wonder about adjusting the reference in the letter to either state that Mr Aberdein mentioned it in his submission to you, or to refer back to other published submissions which cover this material?

Civil servants in Scotland are subject to the UK wide framework of official secrets legislation, the most recent Act being the Official Secrets Act 1989. [REDACTED]
[REDACTED] I've copied more information about the Official Secrets acts below.

Best wishes,

[REDACTED]

The Official Secrets Acts 1911-1989 (OSAs) contain the principal protections against espionage and the unauthorised disclosure of information in the UK.

The 1911 Act makes provision in relation to spying, sabotage and associated crimes. The 1989 Act amends section 2 of the 1911 Act to create a number of new offences in relation to the unlawful disclosure of information and damaging disclosures in six specified categories.

The OSAs apply to current and former employees of the security and intelligence services, and current and former Crown servants and government contractors.

The OSAs apply to:

- Crown servants, including ministers of the Crown, members of the Scottish Government, junior Scottish ministers, civil servants, members of the armed forces and the police force*
- government contractors, including any person who is not a Crown servant, but who provides, or is employed in the provision of goods and services, for the purpose of any minister or any officeholder in the Scottish Administration*
- members of the public who have, or have had, information in their possession*
- individuals do not need to sign the OSAs in order to be bound by them - it is sufficient to be notified that they apply to you, including notification under an employment contract*

The 1989 Act makes the disclosure of official information in six protected categories an offence if the disclosure is made without lawful authority or if the disclosure is damaging.

'Information' includes any information, document or article which a Crown servant or a government contractor has or has had in their possession by virtue of their position.

For Crown servants, a disclosure is made with lawful authority if, and only if, it is made in accordance with his official duty.

For government contractors, a disclosure is made with lawful authority if it is made in accordance with an official authorisation or for the purposes of their functions as a government contractor and without contravening an official restriction.

In all other circumstances a disclosure is made without lawful authority.

The 1989 Act sets out the circumstances in which information is disclosed without lawful authority and a number of circumstances in which a damaging disclosure may be made.

From: James Hamilton [REDACTED]
Sent: 18 January 2021 11:30
To: [REDACTED]@gov.scot>
Subject: Re: Correspondence- for comment

Hi [REDACTED]

I have expanded your draft somewhat. Please let me have your views on the redraft before you send it.

I assume you have official secrets legislation in Scotland. [REDACTED]
[REDACTED]

Best wishes

James

On Mon, 18 Jan 2021 at 11:05, <[REDACTED]@gov.scot> wrote:
Hi James,

With apologies for the delay, please see attached draft letter to go to [REDACTED] Could you let me know of any comments.

Best wishes,

[REDACTED]

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From:

Sent: 19 January 2021 10:47

To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Subject: Personal- correspondence from the Independent Advisor on the Ministerial Code

Dear Ms Lloyd,

Please see attached correspondence from Mr Hamilton.

Mr Hamilton would also like to invite you to participate in a video interview, either in the week commencing 25th January or 1st February. If you are content to participate in a discussion, could you let me know your availability on the 25th- 27th January, and in the following week?

Please let me know if you have any questions.

Best wishes,

██████████

Please contact me on Skype or on

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RE: Videoconferencing

From: [REDACTED]@gov.scot>
To: [REDACTED]@gov.scot>
Date: Tue, 19 Jan 2021 14:47:57 +0000

Hi [REDACTED]

Yes, unfortunately it's still the same case as previously. Cisco is the only platform that works on SCOTS with the recording function enabled. However recording space is limited to 5gb on the started plan. If you have a paid for Cisco plan this may be increased depending on the plan taken.

Unfortunately there no plans to enable the recoding function on MS Teams at present.

Please be aware that the host of the meeting should follow GDPR guidance before and after each recording. As the recoding is done over the SCOTS network it may be subject to FOI requests.

I'm happy to assist during some of your tests if required.

Many Thanks

[REDACTED] | Network Analyst | iTECS Data Centre and Network Services | Scottish Government
| K Spur | Saughton House | Edinburgh | EH11 3XD | [REDACTED]

From: [REDACTED]@gov.scot>
Sent: 19 January 2021 13:44
To: [REDACTED]@gov.scot>
Subject: RE: Videoconferencing

Hi [REDACTED],

We spoke several months ago about the functionality of different platforms for recording video meetings. We are now (finally!) at the point of conducting the interviews, and so I wanted to just double check that given Teams has been rolled out in the meantime there has been no change to any of the considerations here.

From reading the guidance, and testing it in a meeting just now, it looks to me like the record meeting function in Teams isn't available at the moment, so Cisco is probably still my best bet. Is there anything I have missed here, or anything further I should consider?

The first interview is on the 27th so I'm keen to try and sort out and test the arrangements this week.

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 06 October 2020 14:39
To: [REDACTED]@gov.scot>
Subject: RE: Videoconferencing

Hi [REDACTED]

Certainly, id be happy too.

Please organise meeting through WebEx and send me an invite. I can show you around a few of the tools available on the platform. Im free most afternoons between 2 - 3.30. However im on leave next week.

Let me know what suits you.

Thanks

[REDACTED] | Network Analyst | iTECS Date Centre and Network Services | Scottish Government
| K Spur | Saughton House | Edinburgh | EH11 3XD | [REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 06 October 2020 14:18
To: [REDACTED]
Subject: RE: Videoconferencing

Hi [REDACTED]

Many thanks, that's really helpful. Would it be possible for you to show me how to use the feature, and maybe have a chat to check what I'm proposing seems ok. This work is being undertaken on behalf of an independent advisor to SG, so it's a slightly odd position re governance.

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 06 October 2020 11:47
To: [REDACTED]@gov.scot>
Subject: RE: Videoconferencing

Hi [REDACTED]

I will happily assist any with Cisco webex questions.

Yes, Cisco Webex has a recording feature. We do not advertise this feature as recordings are kept on the application and not linked to SCOTS. As we cannot guarantee GDPR compliance on this application we do not recommend using it.

However I will be happy to show you how to use this or any feature on this platform.

Please note – It will then be the responsibility of the account holder to adhere to the GDPR policy for recordings on that account.

<http://saltire/my-workplace/it-and-information-management/data-protection/Pages/Data-protection-principles.aspx?pageid=fb43ced2-395c-41bc-9645-6cb1733c6aa0>

Kind regards

[REDACTED] | Network Analyst | ITECS Data Centre and Network Services | Scottish Government
| K Spur | Saughton House | Edinburgh | EH11 3XD | [REDACTED]

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 05 October 2020 09:43

To: ITECS Unified Communications mailbox <ITECS_UC@gov.scot>

Subject: Videoconferencing

Hi!

I wondered if it would be possible to seek some advice on using Cisco Webex to conduct video conferences? I'm looking to organise a series of video meetings, with a mixture of internal and external attendees, where we would like to use video conferencing but record the audio or video of the session as a detailed record of discussions is needed. I've looked at the guidance online but haven't been able to identify whether Webex provides the necessary functionality.

Would it be possible to have additional information on this, or to discuss with someone if that would be possible/appropriate?

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 19 February 2021 10:11
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED]

Dear Douglas,

Many thanks for this advice, I have forwarded your email to Mr Hamilton. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 18 February 2021 21:27
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: RE: [REDACTED]

Dear [REDACTED]

I was on the point of sending you a lengthy e-mail when your e-mail below came in. The information contained in the attachment plainly has potentially very significant implications to which I will have to give careful consideration. I had, naturally, not anticipated this development and am committed to spending most of tomorrow (and probably a good deal of the weekend) on two other matters with urgent deadlines. While I will return to working on the Ministerial Referral ASAP, I'm afraid that it is likely to be next week before I am able to spend much time on it. In

the meantime, I set out below a shorter version of the e-mail I had been about to send with preliminary observations and queries in relation to the matters on which you have sought my advice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

Happy to discuss any matters arising.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED]

Subject: [REDACTED]

Hi Douglas,

Hope you are well.

I know you're looking at some of these issues at the moment and will have much more detail on this, but wanted to bring you up to speed on something we have received today. I've deliberately avoided detail of names etc. in case this causes any issues, but would be happy to discuss over the phone if that would be helpful.

[REDACTED]

Happy to discuss.

Best wishes,

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RE: Correspondence from Mr Hamilton

From: [REDACTED]@gov.scot>
To: Alex Salmond [REDACTED]
Date: Fri, 19 Feb 2021 17:18:32 +0000
Attachments: Salmond letter Feb 19 2021.docx (15.05 kB)

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 12 February 2021 12:40
To: 'Alex Salmond' [REDACTED]
[REDACTED]

Dear Mr Salmond,

Thank you for your response. I have passed this to Mr Hamilton, who is happy that you provide written statements to the supplementary questions. However, if you would like to discuss matters Mr Hamilton would also be happy to arrange a video interview.

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 11 February 2021 09:56
To: [REDACTED] [REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

Dear [REDACTED]

Thank you for your note. I enclose a reply to Mr Hamilton.

Best Wishes

Alex Salmond

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

11th February 2021

Dear Mr Hamilton

Thank you for your letter of 9th February.

If I may I shall reply within a few days when I have the opportunity to consult my notes. In addition, in preparing evidence for the Parliamentary Inquiry, I have come across some further documentary corroboration for points which I have already made.

I will be happy to send you this material along with the answers to your questions and provide a video interview as well if required.

Yours for Scotland

Rt Hon Alex Salmond

Sent from my iPad

On 9 Feb 2021, at 17:03, [REDACTED]@gov.scot wrote:

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes,

[REDACTED]

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<Correspondence for Alex Salmond- 9 Feb 2021.docx>

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James Hamilton
Independent Adviser on the Scottish Ministerial Code

Alex Salmond

By email to: [REDACTED]

19 February 2021

Dear Mr Salmond,

Thank you for your offer, made in your email of 11 February, to provide additional written material and participate in a video interview if required.

I am reaching the end of my investigation and would therefore need to consider any further material as soon as possible. I would be grateful if you could provide the additional material within the next few days, and confirm if you would want to participate in an interview.

Yours sincerely,

James Hamilton

Re: MR. HAMILTON

From: [REDACTED]@sunday-times.co.uk>
To: [REDACTED]@gov.scot>
Date: Fri, 19 Feb 2021 17:36:47 +0000

Thanks [REDACTED]

[REDACTED]

On Fri, 19 Feb 2021 at 16:05, <[REDACTED]@gov.scot> wrote:

Hi [REDACTED]

No problem at all. Mr Hamilton is not a QC and his correct title is "Mr".

Best wishes,

[REDACTED]

From: [REDACTED]@sunday-times.co.uk>
Sent: 18 February 2021 13:24
To: [REDACTED]@gov.scot>
Subject: MR. HAMILTON

Hi [REDACTED]

Can you clear a simple matter of fact for me?

Is Mr. Hamilton a QC?

I keep reading this on social media and on the Scottish government website.

Best regards,

[REDACTED]

Sunday Times

[REDACTED]

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FW: Private - James Hamilton investigation under the Ministerial Code

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Fri, 19 Feb 2021 12:15:26 +0000

Hi James,

The Committee has been back in touch- I think I could just reissue the email that went to Ms Baillie as it covers the same issues. Let me know if that sounds ok.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 19 February 2021 12:06
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Hi [REDACTED]

I hope you are well, I was hoping you may have more specific timescales for the publication of James Hamilton's decision report on the self referral under the ministerial code?

A response on Monday or Tuesday would be much appreciated so I can update the Committee on Wednesday (I anticipate members will ask again then so I'd like to have the information to hand)

Kind regards

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Monday, February 1, 2021 4:37 PM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Hi [REDACTED],

No problem, before the election is definitely the intention at this point.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 01 February 2021 14:56
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Thanks [REDACTED], just to confirm are you in a position to say before the election is the intention (I appreciate realistically that is feb / march due to purdah rules).

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Monday, February 1, 2021 2:15 PM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Hi [REDACTED]

Apologies, I have been sorting out various things relating to video interviews today.

I think the information I provided last week is all that can really go to the committee at this stage- Mr Hamilton is keen to progress things as soon as he can, but I couldn't offer a definite view on whether that means this month or next is more likely for publication.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 01 February 2021 13:33
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Hi [REDACTED]

Hope you got some downtime over the weekend,

I am just putting together a briefing for the Convener for tomorrow's committee meeting – I can add on details in relation to James Hamilton's work and the associated timescales later today but just wanted to confirm at this stage that you will be able to provide a bit more detail on indicative timescales during the course of today?

Many thanks

[REDACTED]

From: [REDACTED]
Sent: Friday, January 29, 2021 11:18 AM
To: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Thanks [REDACTED]

That is helpful general context thanks for putting that together,

Couple of further points, do you have a sense of whether Mr Hamilton considers February or March as a likely timescale for his report? And has he considered whether he can publish when purdah rules come into force (end march)?

The Committee I think assumes the report will be issued in the next month or two and if it is a possibility that that is not the case I would like to be able to inform them,

Perhaps you could come back to me on these specific points before the committee meets on Tuesday morning, so sometime on Monday?

Have a good weekend

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Friday, January 29, 2021 11:11 AM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Hi [REDACTED],

Thank you for your email.

As you know, Mr. Hamilton has sought written submissions from a range of participants.

Mr. Hamilton is also currently undertaking video interviews with some participants where he has additional questions he wishes to ask them.

Mr. Hamilton intends to complete his report as soon as possible, and is conscious that the Scottish Parliament election is scheduled to take place in early May 2021.

Mr Hamilton is aware that it is intended that his report will be published, and will take the necessary steps to ensure that his report is compliant with any relevant court orders.

I hope this information is helpful- please let me know if you have any other questions.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 27 January 2021 11:51
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Many thanks [REDACTED] if I could have a response by say Friday lunchtime that would be really helpful,

Kind regards

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Wednesday, January 27, 2021 11:46 AM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Dear [REDACTED],

I'm well thanks, hope everything is ok with you.

I have passed your email on to Mr Hamilton and we will get back to you shortly. Is there a specific time by which it would be useful to have a response?

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 27 January 2021 10:32
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Dear [REDACTED]

I hope you are well.

I clerk the SGHHC Committee and the Committee discussed Mr Hamilton's deliberations on the First Minister's self-referral under the Ministerial Code yesterday. The Committee would like to know what the estimated date is for Mr Hamilton to reach a decision. If you are unable to provide a date, an accurate a timeframe for this decision and the associated publication of his report would be much appreciated. I am aware he received Mr Salmond's submission just before New Year and that he has sought and received statements for others. Will there be a stage where he interviews relevant people? I assume this will impact on the timing of his report. In addition, I assume his report will be published as is standard practice? I appreciate there will be substantiating evidence that may not be able to be published given the subject matter and relevant legal obligations that must be complied with.

An indication as to when the decision and associated report will be available would be very much appreciated as soon as you are able,

Kind regards

[REDACTED]
Clerk
SGHHC Committee

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From: [REDACTED]
Sent: 19 February 2021 19:28
To: James Hamilton [REDACTED]
Subject: FW: Letter for James Hamilton

Hi James,

Please see attached response from Mr Salmond. This crossed with your letter which I issued earlier- but probably a good thing it did as it turned out this email was languishing in my junk folder!

Best wishes,

[REDACTED]

From: Alex Salmond <alex@alexsalmond.scot>
Sent: 19 February 2021 07:42
To: [REDACTED]
Subject: Letter for James Hamilton

Dear [REDACTED]

Could you please pass this correspondence to Mr James Hamilton in answer to his recent letter and questions of 9th February?

Best Wishes

Alex Salmond

Mr James Hamilton
Independent Adviser on the Ministerial Code
19 February 2021

Dear Mr Hamilton

Further to your letter of 9th February and my reply of the 11th, I have had the opportunity to consult my records and am now in a position to answer your follow up questions.

Mr Aberdeen did phone me on the 9th of March 2018 and gave me an outline of information he had been given [REDACTED] It was very much a brief and one way conversation as I was travelling in a car with other people.

We arranged to speak again a few days later (I believe the 14th of March) with further information when we were able to discuss in private what he had been told and discuss what was to be done. I have no doubt that Mr Aberdein told me that the information he had been given [REDACTED] was that there were two complaints being investigated, that one was regarded as a significant complaint and one not, and that he named one of the complainants. He said [REDACTED] cannot be absolutely certain that Mr Aberdein imparted the specific information on the name of one of the complainants in our first or second conversations but I am 100 per cent certain that he did so in one of these two conversations and that this was the first time that anyone had done so.

At that time I had received a letter from Ms Evans on the 7th March 2018. This outlined purported incidents but not the names of the complainants. Identifying these was difficult because as it transpired every single date or location (where one was given) turned out to be incorrect. I enclose as Appendix A, a passage from one of my solicitors' letters to Ms Evans of 20th July 2018. This specifies the difficulties which were placed in our way in knowing of what I was being accused and by whom. The full letter is published on the SGHHC website. I recognised the name given to me by Mr Aberdein but was not able to identify the name of the second complainant until some weeks after these conversations when I obtained a photographic record of a public event in question.

I have already given you permission to speak to my legal representatives to corroborate my account of the First Minister's later conversation with me in July 2018. This also applies to the information given to me by Geoff Aberdein in March as I know he had spoken to my advocate Duncan Hamilton at that time. I have, therefore, intimated to Mr Hamilton that in order to confirm factual events and recollections relevant to your investigations I am content that he provide answers to any questions you may have.

In my letter I mentioned to you that I had come across further information when preparing to give evidence to the parliamentary Committee. This concerns the pleadings made by Government in the Open Record of the Judicial Review in December 2018 (which said Record has been published on the SGHHC website as part of their Inquiry) which also contains the claim subsequently made to parliament that the first knowledge the First Minister had of complaints against me was in April 2018. I enclose these at Appendix B. As you will see the terms of this are quite specific and the First Minister was the "interested party" in the case and responsible for these pleadings to court. It says "she first became aware of the existence of an investigation into the petitioner's conduct in April 2018 when the petitioner made her so aware"

I know this not to be true and would further add that if indeed the First Minister had "forgotten" about the meeting in her office on March 29th 2018 only to be reminded of it shortly after her parliamentary statement of January 2019 (FM written evidence Parliamentary Inquiry Annex A) then her proper course of action under the Ministerial Code was to correct the parliamentary record at the earliest opportunity, not 18 months later after a report on the 29th March meeting had appeared on Sky Television on Monday 27th July 2020. Instead over that period it was officially and

publicly denied that there had been any such meeting covering this subject of complaints, including in response to the Sky report itself;

A Scottish government spokesperson told Sky News that Ms Sturgeon does not dispute that the 29 March meeting took place but refutes the suggestion that it involved discussion of the Scottish government's Salmond inquiry.

Sky News asked the Scottish government several questions regarding the meeting on 29 March 2018.

We asked if the Alex Salmond investigation was indeed discussed. A spokesperson replied: "The first minister stands by her statement to parliament".

The first public acknowledgement was within the terms of reference to this investigation in answer to an arranged parliamentary question on 4th August 2020.

I am at your disposal if you require further questions or to speak directly.

Yours for Scotland

Rt Hon Alex Salmond

APPENDIX A -Extract from letter

APPENDIX B - Open Record

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Re: GOOD AFTERNOON

From: [REDACTED]@sunday-times.co.uk>
To: [REDACTED] <[REDACTED].[REDACTED]@gov.scot>
Date: Fri, 19 Mar 2021 19:11:49 +0000

Cheers [REDACTED]

On Fri, 19 Mar 2021 at 18:22, <[REDACTED].[REDACTED]@gov.scot> wrote:

Hi [REDACTED]

I can't give an exact date, but can say that the report will be with the Scottish Government very soon.

Best wishes,

[REDACTED]

From: [REDACTED]@sunday-times.co.uk>
Sent: 19 March 2021 16:23
To: [REDACTED] <[REDACTED].[REDACTED]@gov.scot>
Subject: GOOD AFTERNOON

Hi,

Just checking if you know when Mr. Hamilton will submit his report to the government.

Best regards,

[REDACTED]

Sunday Times

[REDACTED]

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RE: James Hamilton QC

From: [REDACTED] <[REDACTED]@gov.scot>
To: [REDACTED]@mailonsunday.co.uk>
Date: Fri, 19 Mar 2021 18:22:24 +0000

Hi [REDACTED]

I can't give an exact date, but can say that the report will be with the Scottish Government very soon.

Best wishes,

[REDACTED]

From: [REDACTED]@mailonsunday.co.uk>
Sent: 19 March 2021 12:24
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton QC

Hi [REDACTED],

Can I check if you are now able to say when Mr Hamilton will report, and when that report will be published?

I see some people are saying Monday – is that correct?

Thanks

[REDACTED]
Scottish Political Editor
Scottish Mail on Sunday
[REDACTED]

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 05 March 2021 14:32
To: [REDACTED]@mailonsunday.co.uk>
Subject: RE: James Hamilton QC

External Sender

Dear [REDACTED]

That is correct, I am acting as Secretariat to Mr Hamilton for his work on this matter.

Mr Hamilton does not propose to make any public comment pending the issuing of his report. In terms of the timing of the report, Mr Hamilton intends to complete his report as soon as possible. I am unable at this point to provide a more specific timescale.

Best wishes,

[REDACTED]

From: [REDACTED]@mailonsunday.co.uk>

Sent: 04 March 2021 11:01

To: [REDACTED]@gov.scot>

Subject: James Hamilton QC

Hi [REDACTED]

I understand you are secretariat to James Hamilton, in relation to his Ministerial Code inquiry?
Can I check if he still needs to speak to anyone in connection with his inquiries?
And are you able to say, exactly or in general terms, when he is likely to submit his report? Could it be next week?

Many thanks

[REDACTED]
Scottish Political Editor
Scottish Mail on Sunday
[REDACTED]

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From: [REDACTED]
Sent: 19 March 2021 12:48
To: James Hamilton [REDACTED]
Subject: RE: Draft cover letter and note

Hi James,

Completely understand you don't want this to intrude on your birthday! I think, assuming the redrafting you intend to do re recommendations isn't hugely extensive, we could be finished pretty early on Saturday.

If you have a work in progress updated draft [REDACTED] but you want to think about how to formulate the recommendation, I could work on the footnotes and minor comment stuff today?

Best wishes,

[REDACTED]
[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 March 2021 11:06
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Re: Draft cover letter and note

Hi [REDACTED]

I agree we should work towards this Saturday deadline. Saturday, however, is my birthday so I may have to finish early!

The covering letter is generally fine. I plan to put a recommendation [REDACTED] and the Code into the report itself so we may need to amend the covering letter to reflect this.

Best wishes

James

On Fri, 19 Mar 2021 at 09:19, [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)> wrote:
No problem. As a rough timeline, I thought that getting a final report ready to go by close of play on Saturday would allow us to sleep on it and then do a final proofread/check on Sunday before sending to SG on Monday.

I have some proofing comments and other minor stuff to pick up on the report, plus a slightly longer version of the bibliography which I can add to the end of the document, and some checks I've done on the footnotes. Once you have adjusted the draft to take it back to something more straightforward I can track in the various things and get it back to you asap.

From: James Hamilton [REDACTED]
Sent: 18 March 2021 20:00
To: [REDACTED]@gov.scot>
Subject: Re: Draft cover letter and note

I agree Monday is do-able.

On Thu 18 Mar 2021 at 16:30 [REDACTED]@gov.scot> wrote:
Hi James,

Please see attached first draft of a cover letter and note as discussed earlier. I've suggested some alternative formulations which might avoid redaction of the note.

In terms of the timings, I have found out (confidentially) that the Committee report is likely to come out on Tuesday. That would mean Monday might be a good day to send the report if you still intend to beat the Committee and we can get things organised for then- that would mean having the final draft ready on Saturday to allow proofreading and sign off on Sunday.

Best wishes,

[REDACTED]
ccj

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From: [REDACTED]
Sent: 19 March 2021 18:16
To: James Hamilton [REDACTED]
Subject: RE: Report [UNSCANNED]

Hi James,

I've made various proofreading and formatting changes in the attached, all of which are tracked, covering the following themes:

- proofing changes to deal with missing words, extra spaces, upper/lower case errors etc.
- updated the footnotes to check all the links work, and added additional footnotes to some of the published submissions and legal advice documents
- added the bibliography
- made a couple of very minor factual changes (e.g. re. legal directorate not department)

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 March 2021 16:28
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Report [UNSCANNED]

Hi [REDACTED]

Copy (almost) Final Draft herewith

I have to write a short chapter 16 on special advisers and an additional recommendation. I will leave these until tomorrow as I have spots in front of my eyes.

Best wishes

James

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Draft 19 March further revised by JH and [REDACTED]

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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1. Brief summary of the factual background
2. The adoption of the Procedure for handling complaints against Ministers and former Ministers
3. The operation of the Procedure
4. Meetings between [REDACTED] and the former Chief of Staff [REDACTED]
[REDACTED]

5. When did the First Minister become aware that there were allegations against Mr Salmond?
6. The meeting on 29 March 2018
7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019
8. The meeting of 2 April 2018
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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with

Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been (sic) further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and

outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.

Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;
- ii. whether there has been any breach of the Code and the nature of any such breach; and
- iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.”

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, Chief of Staff to the First Minister, Mr Geoffrey Aberdeen, formerly Chief of Staff to the former First Minister, Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary although I had no power to compel any person to cooperate with the investigation. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required.

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled “Handling of harassment complaints involving current or former ministers” (subsequently referred to in this report as the Procedure) which is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister¹.

1.4. [REDACTED] Mr Geoffrey Aberdein, former Chief of Staff to Mr Salmond, met [REDACTED]. Mr Aberdein says that the [REDACTED] informed him that two complaints had been made against Mr Salmond and named one of the complainers. [REDACTED] disputes this. Having discussed the matter with other persons Mr Aberdein decided to inform Mr Salmond of what he had been told and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister, [REDACTED] and Mr Aberdein, which took place in the First Minister’s office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister’s home. Mr Aberdein and Ms Lloyd were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister’s home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

¹ [SP_SGHHC - FN29.pdf \(parliament.scot\)](#)- page 10

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled “Handling of harassment complaints involving current or former ministers.” It is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet” and will be referred to as “the Procedure” in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government’s People Directorate, as well as the Scottish Government Legal Directorate. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament’s Committee on Scottish Government Handling of Harassment Complaints.²

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

² Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](https://www.gov.scot/publications/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf)

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey³ continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised⁴, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.⁵

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.⁶

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the

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[Scottish Government People Survey 2005 to 2018 - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/people-survey-2005-to-2018/)

⁴ <https://www.gov.scot/publications/foi-17-02235/>

⁵ Response to Committee of the Scottish Government Handling of Harassment Complaints, [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](http://www.gov.scot/publications/foi-17-02235/attachment/1/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf) paragraph 4.

⁶ Ibid., paragraph 5

Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers⁷ so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.⁸

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure. The Procedure did not cover historic claims against former civil servants.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter 13 in which I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It is not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

⁷ [SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

⁸ [SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

2.8. So far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC has prepared a report which was published on 15 March 2021.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I am not aware of anything in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal directorate, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond. It is not part of my remit to examine the administrative arrangements for the introduction of the Procedure and I make no comment about these.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers as a result of which she was not informed of the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that at present the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement. Later in this report I raise the question whether Ministers should bear responsibility for the activities of their special advisers.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. "An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative." (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. Crucially in relation to the complaints against Mr Salmond it was the failure to observe this provision which led to the success of his petition for judicial review. The role of the Investigating Officer will be to undertake an impartial collection of facts, from, (sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are

collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.(Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Meetings between [REDACTED] and the former Chief of Staff [REDACTED]

4.1. There were meetings on [REDACTED] and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]

[REDACTED]

4.2. [REDACTED]

4.3. [REDACTED]

4.4. [REDACTED]

In the light of the “me too” movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] predecessor if there was anything of that nature, from his time as Chief of Staff, [REDACTED]

4.5. [REDACTED] had remarked the previous week that the content of an official briefing provided for First Minister’s Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of “No” to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than five cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister in general or into Alex Salmond in particular.

4.6. [REDACTED] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [REDACTED]

4.7. Whilst discussing “me too” in general, [REDACTED] described asking Mr Aberdeen whether he was aware of anything of concern. [REDACTED] said Mr Aberdeen had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] gave a general description of the incident which he presented as being in his view a minor incident, [REDACTED]

█ says that he named the person concerned and that he did not seem to think it was a particularly significant incident. █
█

4.9. The conversation about “me too” also covered a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. █ also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of █ had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to █ suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters █ He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of █
█
█

4.13. █
█
█

4.14. █

█ says that this resulted from █ increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be an investigation in the future as it was clear there could be something to investigate. █
█

[REDACTED]

4.15. [REDACTED] claims that in order to [REDACTED] indicated that she had a reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED]

[REDACTED] says that Mr Aberdein took this to mean that someone within government had given [REDACTED] information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what [REDACTED] was saying.

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [REDACTED] denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by [REDACTED] is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how Mr Aberdein could have misunderstood what [REDACTED] said.

4.18. However, whether it is the case that [REDACTED]

[REDACTED]

[REDACTED] There is no evidence to suggest that the First Minister was aware of Mr Aberdein's version of events before the end of March. If Mr Aberdein's account is correct I think it quite likely in any event that [REDACTED]

4.19. [REDACTED]

[REDACTED] would undoubtedly have been well aware that under the Procedure harassment complaints were required to be treated in confidence and

the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint

4.20. Mr Aberdein states that it was

Furthermore, the information which Mr Aberdein later gave Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr [REDACTED] by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what [REDACTED] had told him. In view of the fact that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [REDACTED] about the existence of complaints and the identity of a complainer is credible.

4.21. In the absence of any evidence that [REDACTED] informed the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdein and [REDACTED] do not in my opinion constitute any breach of the Ministerial Code by the First Minister.

[REDACTED] It remains the fact that the name which Mr Aberdein says was given to him was in fact the name of one of the complainers against Mr Salmond.

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a "lingering concern" about Mr Salmond. She described it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. Mr Aberdeen believes he told the First Minister of the existence of complaints on 29 March; he did not have details of these complaints at that time. (See paragraph 6.10 below).

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but believes he contacted [REDACTED] through a phone call.

6.2. Thereafter, he believes he may have met [REDACTED]
[REDACTED]
[REDACTED]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [REDACTED]
[REDACTED]

6.4. Mr Aberdein said that at [REDACTED] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [REDACTED]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [REDACTED] the First Minister [REDACTED]

6.7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First

Minister's office in the Scottish Parliament. [REDACTED]
[REDACTED]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. [REDACTED]
[REDACTED]

[REDACTED] Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [REDACTED] said Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset

about it but I agreed, we didn't set the date of the meeting with Alec at that point, that was [arranged] over the weekend. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdein agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdein's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by [REDACTED] and Mr Aberdein [REDACTED], concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. Mr Aberdein says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdein's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be that [REDACTED]

[REDACTED] It may simply have been [REDACTED]

[REDACTED] However, this is speculation and it would probably not be right to place too much significance on the matter.

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to⁹.

⁹ Official Report 8 Jan 2019 (parliament.scot)

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdein on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdein's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdein was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that shortly before the meeting of 29 March [REDACTED] and she understood that [REDACTED] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [REDACTED] Mr Aberdein asked [REDACTED] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdein was said to have indicated [REDACTED] that Mr Salmond was in a state of distress and considering standing down from the SNP. The First Minister says that she had not been aware of these contacts in advance. [REDACTED]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdein was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion

covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdein agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdein says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having “relayed to me, in very high level, a summary of the complaints.” By “in high level” Mr Aberdein meant “not in detail”- indeed he made it clear to me in discussion that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdein on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdein that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraphs 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [REDACTED] recalled a reference by Mr Aberdein to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a ‘lingering concern’ that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her.

Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that I find it difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting¹⁰. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was

¹⁰ [Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting". The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings which she explained on the basis that she had no responsibility for operating the Government's harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdeen to the Scottish Parliament on 8 January 2019, although the First Minister's statement was technically a correct statement of the occasions on which she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdeen. Mr Duncan Hamilton, an advocate retained on behalf of Mr Salmond, was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdein on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore

this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that "If it comes to it I will intervene". Mr Aberdeen did not hear this statement made but he had absented himself from the room at one point and he points out that it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond "I want to assist", which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, "I'm facing this terrible situation," it is entirely possible that you say things like, "I'd love to help if I could"—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, "Is there anything I have to do? Do I have to report this to anybody?" All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently

to Margaret Mitchell, I did not think that that would have been appropriate for me to do¹¹.

In reply to a question from Mr Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process¹².

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, ‘take control of the

¹¹ [Official Report \(parliament.scot\)](#)- page 120

¹² [Official Report \(parliament.scot\)](#)- page 120

story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!). If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[REDACTED]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to

me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration

with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond's interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that

this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme.

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the First Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. A process of review of the Procedure by Ms Laura Dunlop QC was completed on 15 March 2021. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as a few months before. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website and can be accessed at <https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/>.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints

against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO “will have had no prior involvement with any aspect of the matter being raised.” Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel’s response at different stages- “a very real problem indeed” and “extremely concerning” on 31 October, the Petition “more likely than not to succeed” on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the “least worst” option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not tender it lightly. But we cannot let the respondents sail forth into January’s hearing without the now very real risks of doing so being crystal clear to all concerned¹³.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate “was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case”. In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were “very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn’t think we had a stateable case...¹⁴”

14.5. On 17 December Counsel’s pessimism had deepened. The following extracts from a joint advice of Senior and Junior Counsel of that date they state:-

¹³ [OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

¹⁴ [OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a “scorched earth” one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those “in the crosshairs” – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no statable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely

certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined¹⁵

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by [redacted] as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now¹⁶

¹⁵ [OCT-LA24-LPP-5-FINAL-Committee+copy.pdf \(www.gov.scot\)](#)

¹⁶ [Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](#)

14.7. There followed what was described as a “watershed moment” on 21 December¹⁷. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting. As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond’s proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of “the overarching duty on Ministers to comply with the law” stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel’s advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond’s petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Scottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

¹⁷ [OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement

in the paragraph “for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The Ministerial Code: Special Advisers

17. The alleged leak to the Daily Record

17.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary’s Decision report to the Daily Record was sourced from the First Minister’s Office.

17.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence it is a matter for the police.

18. Conclusions and recommendations

17.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government's response to the petition of Mr Salmond (cite correct title of petition).

17.2. For the reasons set out in detail above in this Report I am of the opinion that The First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

James Hamilton

19 March 2021

Bibliography

The Ministerial Code

The Scottish Ministerial Code can be found at the following link:

[Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-code/pages/introduction.aspx)

The Procedure

The procedure entitled “Handling of harassment complaints involving current or former ministers”, under which the original complaints were handled, can be found here: [https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/](https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/pages/introduction.aspx)

The Scottish Government provided a submission to the Scottish Parliament Committee on the development of the policy. This can be found at the following link: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](https://www.gov.scot/publications/development-of-the-policy/pages/introduction.aspx)

The Scottish Government also provided a timeline of the development of the procedure. This can be found at the following link:

[Timeline for Statement 1 - 14 August\(1\).pdf \(parliament.scot\)](https://www.parliament.scot/Document/Statement%201%20-%2014%20August%202020.pdf)

Documents supporting written statement on the development of the policy

Circulation of draft version 5.0 of the procedure for review :

[SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/draft-version-5-0-of-the-procedure-for-review/pages/introduction.aspx)

Discussion of the procedure covering all harassment not only sexual harassment :

[SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/discussion-of-the-procedure-covering-all-harassment-not-only-sexual-harassment/pages/introduction.aspx)

Fairness at work

There are a number of publically available sources which give background on fairness at work and harassment complaints in the Scottish Government.

This link provides information on harassment complaints up to 2017:

[Internal complaint system: FOI release - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/internal-complaint-system-foi-release/pages/introduction.aspx)

This link provides information to People Survey conducted yearly in the Scottish Government to obtain view from our employees about the experience of working in the Scottish Government and its agencies:

[Scottish Government People Survey 2005 to 2018 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/people-survey-2005-to-2018/pages/introduction.aspx)

The Judicial Review

The Scottish Government provided a submission to the Scottish Parliament Committee on the conduct of the Judicial Review. This can be found at the following link: [SP SGHHC2 Written Statement on the Judicial Review 20 July 2020.pdf \(parliament.scot\)](#)

Official Committee's reports

The Committee's evidence session with the First Minister:
[Official Report \(parliament.scot\)](#)

First Minister's opening statement on 8th January 2018:

[Official Report 8 Jan 2019 \(parliament.scot\)](#)

Alex Salmond evidence submission of 23rd February 2021:
[Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

Documents to Legal privileged advice :

Joint counsel note of 6th December 2018 :
[OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

Consultation with Law Officers, Senior Counsel and SGLD:
[OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

Joint Counsel Note of 17th December 2018:
[OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

Joint Counsel Note of 19th December 2018:
[Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](#)

Counsel's email to SGLD regarding the prior contact between IO and complainants:
[OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

FW: Background material

From: Hynd JS (James) <james.hynd@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Wed, 19 Aug 2020 22:45:30 +0000

[REDACTED]

We also covered this point in our earlier call.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

From: James Hamilton
Sent: 12 August 2020 13:21
To: Hynd JS (James)
Subject: Re: Background material

Dear James

Thank you for this further information.

With regard to the redacted note from the Permanent Secretary of 17 August the redactions, from my point of view, render the significance of the document difficult for me to understand. It is important for me to be fully apprised of all relevant communications between the First Minister and the Permanent Secretary. I have no means at present of knowing whether the redacted material has a bearing on the matter I am asked to review and I am not even aware of the subject-matter of the redacted advice. My understanding is that legal professional privilege is a privilege which may be waived by the client.

This issue highlights the importance and urgency of appointing a Scottish lawyer to assist me.

I might add that I have no objection to redactions made to protect the identity of the complainants or their personal details.

Best wishes

James

On Wed, 12 Aug 2020 at 09:11, <James.Hynd@gov.scot> wrote:

Good morning James

I promised you yesterday that I would send on some additional material that has just been released to the Committee. The expectation is that the Committee will publish this on their website in the coming days.

There are four documents:

1. A written statement the Committee asked for about the self-referral process that has led to your appointment.
2. A copy of the note from the First Minister to the Permanent Secretary advising her that there had been contact with Mr Salmond.
3. A copy of the Permanent Secretary's response.
4. A copy of a note from the Permanent Secretary to the First Minister advising about progress with the investigation. This document contains redactions for the purposes of protecting legal professional privilege.

I am hoping this file is not too large to send or receive. If so, I shall break into down into a number of emails.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 10 August 2020 22:35
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Background material

No problem. About 12 noon would be good.

On Mon, 10 Aug 2020 at 22:14, <James.Hynd@gov.scot> wrote:

Hello

Sorry, I've only got to this now. Very happy to speak. Would you be free around mid-day or late afternoon tomorrow (Tuesday)?

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 10 August 2020 15:54
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Background material

Dear James

It might be useful for us to have a brief discussion on the phone.

Best wishes

James

On Thu, 6 Aug 2020 at 19:38, James Hamilton <[REDACTED]@[REDACTED]> wrote:
Looks perfect, thanks!

On Thu 6 Aug 2020 at 16:04, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

I am sorry those links didn't work. Here are Word versions of both. I hope these come through ok.

Regards

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 06 August 2020 14:53
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Background material

Dear Mr Hynd

Thank you for this material which I have printed down except for items 7 and 9 which redirected me to another address. I am not sure how to find these two. Maybe if someone can print and scan them they could be sent to me attachments.

Best wishes

James

On Tue, 4 Aug 2020 at 23:42, <James.Hynd@gov.scot> wrote:

Dear Mr Hamilton

I have prepared for you the attached note that includes links what I think are the key documents that frame the referral.

These are:

1. The current version of the Scottish Ministerial Code
2. The Scottish Government procedure for considering harassment complaints against current or former Ministers. It was this procedure that was used to consider internal complaints against Mr Salmond.
- 3, 4, and 6. The First Minister's statement to the Scottish Parliament on 8 January 2019 when she disclosed the meetings with Mr Salmond, and also First Minister's Questions on 10 and 17 January when the matter was further discussed in Parliament.
- 5 and 7. The announcement on 13 January of the original self-referral and the decision to pause it on 31 January 2019.
8. Press coverage of a meeting between the First Minister and the former First Minister's former special adviser at which it is suggested issues relevant to the self-referral were discussed.
9. The published remit for the self-referral.

We are also searching for other internal documents that the Parliamentary Committee has asked for. I will provide you with copies of what is disclosed to the Committee.

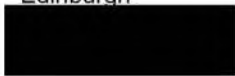
I hope getting the material in this format is convenient for you. I can explore getting hard copies of this to you if that would be more convenient.

Obviously, I will be happy to track down any further material that you feel that you need.

Best wishes

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03

St Andrew's House
Edinburgh



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-----Original Message-----

From: [REDACTED]
Sent: 19 October 2020 09:29
To: Geoff Aberdeen [REDACTED]
Subject: RE: Scottish Ministerial Code

Dear Mr Aberdeen,

Thank you for your email and apologies for the length of time it has taken for the letter to reach you. [REDACTED]

[REDACTED] I completely understand that the current Covid restrictions have meant that your opportunities to receive the letter are currently more limited than usual.

Mr Hamilton is happy to provide clarification on his letter and the work he is undertaking, but would prefer to do so in writing as this ensures there is a record of the discussions. Would you be able to provide questions in writing for Mr Hamilton's consideration? Mr Hamilton hopes to progress his work over the coming weeks so a response by the end of this week, if possible, would be greatly appreciated.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [REDACTED]

-----Original Message-----

From: Geoff Aberdeen <[REDACTED]>
Sent: 13 October 2020 12:47
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Scottish Ministerial Code

FAO James Hamilton

Dear Mr Hamilton

I have today received your letter of 8 September concerning the First Minister's self-referral under the Ministerial Code. [REDACTED] and, given the current restrictions on employees, it only came to my attention today.

I am, of course, willing to assist your enquiries but I would welcome a call with you in the first instance to discuss the best way for me to do this.

Perhaps you or your team can contact me using this email address to arrange this?

If there is any requirement for you to send me hard copy information going forward please do so by sending it to the following address:



I look forward to hearing from you.

Best wishes

Geoff Aberdein

Sent from my iPad

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

From: [REDACTED]
Sent: 19 October 2020 12:14
To: Alex Salmond <[REDACTED]>
Subject: RE: Mr James Hamilton

Dear Mr Salmond,

I am emailing to confirm that Mr Hamilton has received your emails of the 8th October and 17th October, and is considering the questions you have raised in both pieces of correspondence. Mr Hamilton will respond to your questions shortly.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED]

From: Alex Salmond
Sent: 17 October 2020 12:34
To: [REDACTED]
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On 6 Oct 2020, at 22:28, Alex Salmond <[REDACTED]> wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation.

It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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For more information please visit <http://www.symanteccloud.com>

From: [REDACTED]
Sent: 19 October 2020 11:28
To: James Hamilton <[REDACTED]>
Subject: Letter to Mr Salmond

Hi James,

Hope you had a good weekend!

I've tidied up the Salmond response as discussed on Friday- this is now attached so you can just double check it before I send it to Mr Ross.

Could you also reply to my previous email about instructing Mr Ross just to confirm in writing that you are content to proceed?

Best wishes,

[REDACTED]

Draft letter to Mr Salmond

Dear Mr Salmond,

Thank you for your email of 8th October, asking various clarification questions about the work I am undertaking.

Regarding the first point, I note what you say about representing yourself. I will, of course, have no control over what you put in your submissions. I can confirm that I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

In relation to your second point, thank you for drawing my attention to the two court interlocutors attached to your letter. I would indeed appreciate receiving a copy of the letter from the Crown Office which you refer to. Again, as I have just stated, I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

On the third point, as you will know, James Hynd's role as head of Cabinet Secretariat includes supporting Ministers in matters relating to the Ministerial Code. On that basis, Mr Hynd supported the Deputy First Minister in establishing the referral I have been asked to undertake.

Mr Hynd has stepped away from the process and [REDACTED] has been appointed as Head of Secretariat Support to support my work as I require. I can confirm therefore that James Hynd will not play any role in relation to the day to day conduct of the inquiry or in the finalisation of my report and any recommendations that I may make.

I note your comment concerning my remit. Considering that the principal matter I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister's failure to record contacts with you it seems entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances.

Further letters- shell letter

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Thu, 19 Nov 2020 10:20:35 +0000
Attachments: James Hamilton- shell letter.docx (17.16 kB)

Dear James,

As discussed, please see attached shell letter to go out to the remaining potential participants. I will start populating this with relevant information for each letter. Let me know of any comments on the general structure and content.

I have also copied a link to Mr Murrell's submission to the Parliamentary Committee. Apologies, I thought I had sent this previously. The section on the meetings is on p2.

https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/Written_submission_from_Peter_Murrell.pdf

Best wishes,

[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]@gov.scot

[] November 2020

Dear [respondent]

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you information to assist me in preparing my report.

Written submissions provided by other participants have indicated that [whatever the information is in the relevant submission].

I would be grateful if you could confirm if this information is correct, and provide any further information you may have that would be relevant to my remit.

It would be helpful to have your response to this letter by [2 weeks from date issue]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

From: [REDACTED]
Sent: 19 December 2020 15:16
To: Alex Salmond [REDACTED]
Subject: RE: Correspondence for Mr Hamilton

Dear Mr Salmond,

Please see attached further correspondence from Mr Hamilton.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 07 December 2020 09:20
To: 'Alex Salmond' [REDACTED]
Subject: RE: Correspondence for Mr Hamilton

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 23 November 2020 14:52
To: [REDACTED] [\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Correspondence for Mr Hamilton

Dear Mr Hamilton

Thank you for your letter of 29th October. I apologise for the delay in replying, but I had assumed that it had crossed with the exchange in the Scottish Parliament, detailed below, of that same date. To that end, I was awaiting a follow up letter from you, confirming that indeed your remit was not “limited to one aspect of the Ministerial Code”;

- **Oliver Mundell (Dumfriesshire) (Con):** Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond’s alleged behaviour?
- **The First Minister (Nicola Sturgeon):** My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues

that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

You will have noted that this parliamentary exchange seems at odds with your letter, which suggests that you are restricted to answering the “questions asked in the referral”. You state;

“As you are aware the remit of the referral was set out by the Deputy First Minister in a PQ response to the Scottish Parliament made on 6 August 2020. Considering that the principal matter I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister’s failure to record contacts with you it seems entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances.”

As detailed in my previous letter, I know of no aspect of the Ministerial Code which prevents a First Minister intervening in a process, not least one which was found by the Court of Session to be “unlawful”, and as one consequence of which said process is currently being examined by the SGHHC Committee of the Scottish Parliament.

As I understand it, not intervening to ensure Government is not acting unlawfully when there is a danger that this might be the case, could be considered a breach in terms of the Ministerial Code. Non-intervention in this matter is relevant to the period covering spring and summer of 2018, and in the autumn, this extended to agreeing with or permitting the Permanent Secretary to disregard external legal advice on the Government’s prospects of success in the Judicial Review.

This was further compounded by Parliamentary statements on repeated occasions, which have been questioned by MSPs as misleading, most pertinently in relation to the timing of when the First Minister first knew of the investigation and the explanation that [the 2nd April](#) meeting was held in the First Minister’s private home because she thought it was a matter of party business. There is, of course, the further question of the criminal leak of protected information to the Daily Record newspaper on 23/24th August 2018 and what, if anything, was the First Minister’s state of awareness of the circumstances and the potential involvement of her staff in same.

When I established the independent procedure for referral of purported First Ministerial breaches of the Ministerial Code, it was an innovation and one carried through in good faith. I appointed people of outstanding calibre, such as yourself as independent advisors, so that no-one could suggest that any referrals were being “fixed” either by the civil service or the Government.

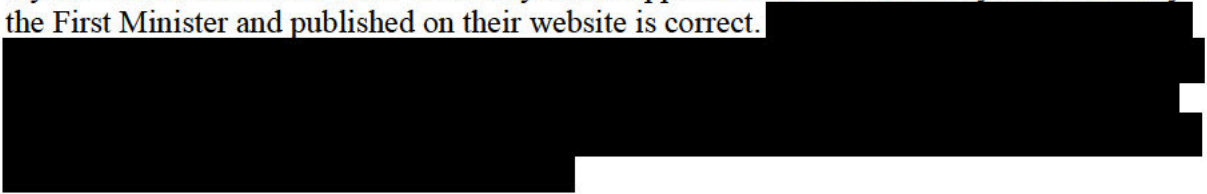
It would be disappointing if this is now being done by the Deputy First Minister, by virtue of confining your terms of referral.

I look forward to your confirmation that your remit is not “limited to just one aspect of the Ministerial code”. On that basis I will submit the evidence for which you have asked.

Two final matters.

Firstly, I enclose the letter from the Crown Office which you requested. As you will note, it threatens prosecution if I were to reveal to the Parliamentary Committee (and presumably to yourself) documents which were disclosed in the course of the criminal case.

Secondly, I confirm that the record of Whatapp messages between the First Minister and myself from 5 November 2017 to 20 July 2018 supplied to the Parliamentary Committee by the First Minister and published on their website is correct.



I look forward to hearing from you

Yours sincerely

Rt Hon Alex Salmond

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Alex Salmond

By email to: [REDACTED]

19 December 2020

Dear Mr. Salmond,

Further to my letter of 7 December 2020, I repeat my enquiry whether you are prepared to provide a written statement to help me with my investigation. It would be very helpful to have a written statement from you, with as much information as you feel able to provide, setting out your responses to the questions included in previous correspondence.

As you are aware the Ministerial Code provides that the First Minister may refer matters to the independent advisers to provide her with advice on which to base her judgment about any action required in respect of Ministerial conduct. The First Minister has made such a referral to me on foot of which I have sought written statements from all the persons whom I have identified as likely to have evidence relevant to that remit. I have now received written statements from every person whom I have so identified except you.

As you are also aware I have no power to compel any person to cooperate with me. That being so I must formulate my advice on the evidence and information which is available to me. I also consider that the First Minister is entitled to expect that I will do so in a reasonably expeditious manner.

I therefore now intend to complete my consideration of written statements as soon as possible. In order for any statement from you to form part of that consideration I will need to receive it without delay. If you do intend to make a statement I would appreciate it if you could let me know when I might expect to receive it, otherwise I shall assume that you have decided not to become involved in this process.

Yours sincerely,

James Hamilton